David Jacoby

Exhibit 1

# Opinions on XPO's Activities and Responsibilities

in the Case of

**Great Southland Limited** 

 $\mathbf{v}_{\bullet}$ 

Landash Corporation, et al.

**CONFIDENTIAL** 

By David Steven Jacoby

June 14<sup>th</sup>, 2021

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# 1 Introduction

# 1.1 Brief Executive Summary

I was asked to offer an analysis and an opinion, based on my background and experience in supply chain management, as to whether and to what degree XPO may have been responsible for the actions of Afif Baltagi, in his capacity as XPO's Branch Manager of XPO's Houston, Texas facility, in the Ponzi scheme orchestrated by Jason Adkins.

I reviewed the prior testimony made available to me by Carlile Patchen & Murphy LLP, which consisted of over 14,000 pages. I consulted some of my prior client files, and did a small amount of research on certain aspects of the case, XPO, and Great Southland (GSL).

Based on my review and my experience, it is my opinion that, Baltagi's duties and responsibilities as Branch Manager included having direct communications with the customers and coordinating all aspects of the supply chain management service XPO was providing at its Houston facility. Such supply chain management service includes receipt of goods for a customer, holding of goods for a customer, release of goods for customers, communicating with third parties regarding the status of the goods shipment, arrival, inspection, and release expectations, and executing documents, such as warehouse receipts and other day-to-day contracts or agreements, relative to the supply chain services XPO was providing. Baltagi's duties would also include coordinating with vendors as needed to fulfill the supply chain services XPO was offering. These services were all being performed by Baltagi in the course and scope of his job duties as XPO's Branch Manager in the tire transactions that formed the basis of the Ponzi Scheme that defrauded Great Southland Limited, and many others.

Furthermore, although certain XPO employees may or may not have conspired with Baltagi, the company's lack of clear organizational roles and responsibilities, inadequate safeguards, imbalanced incentives and measurements, lack of Human Resource (HR) development and training, and inadequate supervision created an environment that provided a ripe breeding ground for such fraud and conspiracy. Most comparable organizations deploy a range of practices and procedures that would have caught onto Baltagi's actions earlier, and mechanisms that would have mitigated the cost to the victims. Industry best practices may have prevented the fraud altogether.

# 1.2 My Professional Background

I have been consulting for 32 years in supply chain management, operations strategy and performance improvement, primarily in the transportation, logistics, energy, and automotive sectors. Much of my work has consisted of benchmarking and industry best practices studies. My clients have included transport and logistics companies such as UPS, FedEx, Iron Mountain, CSX, Jacksonville Port Authority, and Amtrak, as well as shippers including A.T. Cross, Mercedes-Benz, and General Motors. I've also consulted to information systems providers such

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as SAP, and government agencies such as the U.S. Department of Transportation and the New York City Housing Authority.

Before founding Boston Strategies International, I served as a consultant in the logistics, transportation, procurement, operations management, and supply chain management practices of management consulting firms including Kearney, Temple Barker & Sloane (now Oliver Wyman) and a boutique firm called Carlisle, Fagan, Gaskins & Wise. I also taught Operations Management at Boston University's graduate school of business.

I wrote *Guide to Supply Chain Management* (The Economist, 2009) and other books on supply chain management, logistics and trade. I also wrote both the Shippers Compliance in Freight Transportation & Logistics and the Carrier Compliance in Freight Transportation & Logistics chapters for the Governance, Risk, and Compliance Handbook (Tarantino, 2006), and have contributed several hundred speeches, articles, white papers, and webcasts for publications such as Supply Chain Management Review, Supply Chain Quarterly, and the Transportation Research Board.

My supply chain certifications include: Certified Fellow in Production and Inventory Management (CFPIM), Certified Supply Chain Professional (CSCP), Certified in Integrated Resource Management (CIRM), Certified in Purchasing Management (Lifetime C.P.M.), and Certified in Transportation and Logistics (C.T.L.), among others.

## 1.3 Retention for This Matter

I was retained by Carlile Patchen & Murphy LLP in March 2021. I am compensated at a rate of \$550 per hour. The fees I receive are not contingent on the outcome of this litigation. To my knowledge there is no conflict of interest between my work on this case and any other work I am doing or have ever done.

#### 1.4 Materials Reviewed

The electronic files conveyed to me regarding this case were as follows:

- 1. 12-16-20 Komsky+Exhibits.pdf (Komsky deposition)
- 2. 13574-13655.pdf (Baltagi W2)
- 3. 13733.pdf (Baltagi contractor termination letter)
- 4. 14805-14819.pdf (Baltagi-Paladin email thread)
- 5. 14949.pdf (Baltagi-Great Southland email)
- 6. 15230-15239.pdf (Baltagi-Paladin tire serial number emails)
- 7. 16148-16150.pdf (Baltagi-Paladin tire serial number emails)
- 8. 48619-49370.pdf (XPO Employee Code of Conduct)

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- 9. Adkins, Jason (7-22-2019).pdf (Adkins deposition)
- 10. Allen, Joshua + EXH 12-10-2019.pdf (Allen deposition)
- 11. Baltagi, Afif (8-5-20).pdf (Baltagi deposition)
- 12. Baltagi File (02385408x9D84A).pdf
- 13. Carlos Musetti 10-01--2019.pdf (Musetti deposition)
- 14. Cesar Bernal 10-01-2019.pdf (Bernal deposition)
- 15. Complaint 08-15-2017.pdf (Great Southland complaint)
- 16. DE UCC Financing Statement on Landash Corporation (01649906x9D84A).PDF
- 17. DE UCC Financing Statement on XPO Logistics, Inc. (01649905x9D84A).PDF
- 18. DE UCC on Landash Corporation (2016 6951584) (01741238x9D84A).PDF
- 19. DE UCC on XPO Logistics, Inc. (2016 6951824) (01741239x9D84A).PDF
- 20. Deposition of Todd L. Wilkin on 01-12-2018 (02245735x9D84A).PDF (Wilkin deposition)
- 21. EX. 8 Affidavit.pdf (Baltagi confirmation of serial numbers)
- 22. EX3\_Loan Agreement.PDF (Great Southland Loan Agreement to Landash)
- 23. EX4\_Gaurantee.PDF (Jason Adkins guarantor agreement with Great Southland)
- 24. EX5\_Security Agreement.PDF (Great Southland Security Agreement with Landash)
- 25. EX6\_Statement of Account.PDF (Great Southland account statement for Landash)
- 26. EX7\_Invoice.PDF (Best One Bill of Sale to Great Southland)
- 27. EX8\_Work Order.PDF (Best One Invoice to Great Southland)
- 28. EX9\_ Warehouse Receipt.PDF (XPO Receipt for 36 tires from Great Southland)
- 29. Exhhibt A GSL's Memo Contra to XPO's Objection.pdf
- 30. First Amended Complaint.pdf (Great Southland v Landash et al)
- 31. Friedman, Katherine + Exhibits
- 32. Hodgson Volume 1 + Exhibits.pdf (Hodgson deposition)
- 33. Hodgson Volume 3 + Exhibits.pdf (Hodgson deposition)
- 34. Hodgson Volume 2 + Exhibits.pdf (Hodgson deposition)
- 35. Jorgensen, Henrik (10-15-2019).pdf (Jorgensen deposition)
- 36. Landash Corp Bank Statements
- 37. Muzi, Dominic (8-12-19).pdf (Muzi deposition)
- 38. Oliver, Ian (8-26-2019).pdf (Oliver deposition)
- 39. Santo, Susan (9-26-2019).pdf (Santo deposition)
- 40. Shook, Max (8-22-2019).pdf (Shook deposition)
- 41. TX UCC Amendment on Landash Corporation (16-0011181423) (01651235x9D84A).PDF
- 42. TX UCC Amendment on Landash Corporation (16-00116672) (01662104x9D84A).PDF
- 43. TX UCC Amendment on XPO Logistics, Inc. (16-0011181544) (01651238x9D84A).PDF
- 44. TX UCC Amendment on XPO Logistics, Inc. (16-00116671) (01662102x9D84A).PDF
- 45. TX UCC Financing Statement on Landash Corporation (16-0011181423) (01651222x9D84A).PDF
- 46. TX UCC Financing Statement on XPO Logistics, Inc. (16-0011181544) (01651218x9D84A).PDF

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- 47. XPOAB00013578\_CONFIDENTIAL (02385411x9D84A).xlsx (XPO payments to Baltagi)
- 48. XPOAB00013579\_CONFIDENTIAL (02385412x9D84A).xlsx (Baltagi performance reviews)

In addition, I referenced various websites and publicly available online documents, such as XPO's 2020 10-K.

# 1.5 Citation Formats and Report Updation

For clarity this report cites references to deposition and other discovery material where such references may be useful. For brevity I inserted these citations parenthetically using the format "(Deponent's Name or source file name, page number of the pdf source file)," for example (Komsky, 32). Unless these references apply to a specific sentence or phrase, I placed them at the end of paragraphs for easier readability. If multiple citations apply to the paragraph I used a semicolon to separate them, for example (Musetti, 11; Hodgson, 117). External references are cited as footnotes.

I reserve the right to supplement this report should new information become available to me.

**David Steven Jacoby** 

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# 2 Assessment of the Culpability of XPO in the Great Southland Fraud

# 2.1 Extended Executive Summary

XPO underwent a massive roll-up between 2012 and 2014 that increased headcount from 227 to 89,000. Controls that had previously been in place were not replaced with suitable management of the rolled-up entities.



Figure 1: XPO Logistics Headcount and Revenue Over Time

Source: Macrotrends<sup>1</sup>

The management environment was characterized by a lack of structure including ambiguous roles and responsibilities. Some might explain it as "entrepreneurial" and linked to the company's aggressive growth-by-acquisition strategy. While weak controls might have been forgiven when the company was privately held and had 227 employees in 2011 or 892 in 2012, the lack of controls exposed the company and its customers to significant risks to shareholders once the company listed on the NYSE in June 2012,<sup>2</sup> and especially as it grew to 2,259 staff in

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<sup>&</sup>lt;sup>1</sup> Employee headcount: <a href="https://www.macrotrends.net/stocks/charts/XPO/xpo-logistics/number-of-employees">https://www.macrotrends.net/stocks/charts/XPO/xpo-logistics/number-of-employees</a>; Revenue: <a href="https://www.macrotrends.net/stocks/charts/XPO/xpo-logistics/revenue">https://www.macrotrends.net/stocks/charts/XPO/xpo-logistics/revenue</a>

<sup>&</sup>lt;sup>2</sup> United States Securities and Exchange Commission, Form 8-K. June 8, 2012. http://edgar.secdatabase.com/170/119312512265382/filing-main.htm

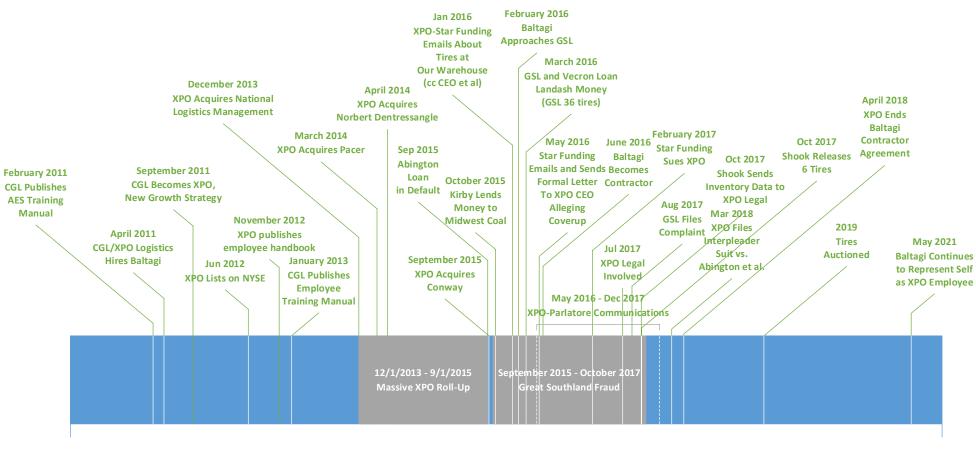
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2013, 10,000 employees in 2014, and 89,000 in 2015 following the acquisitions of Pacer, Norbert Dentressangle, Conway, and 14 other companies.<sup>3</sup>

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<sup>&</sup>lt;sup>3</sup> "XPO Logistics: Fast growth through acquisitions and management style." Westchester and Fairfield County Business Journal. By Kevin Zimmerman. November 17, 2017.

**Figure 2: Timeline of Events** 



January 2010 October 2021

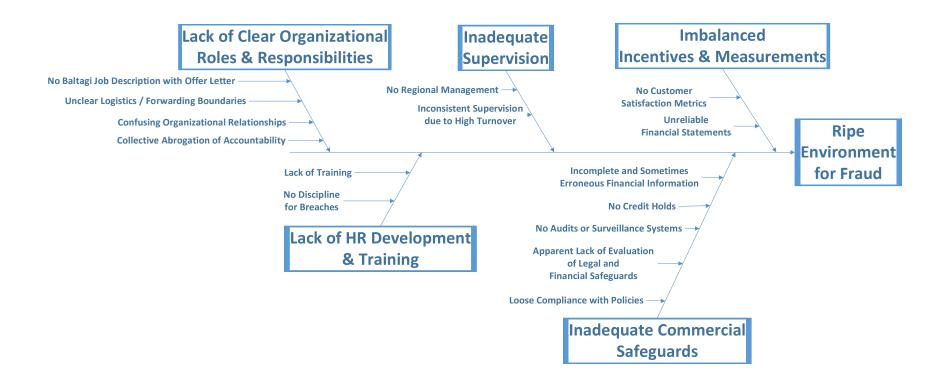
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In the timeframe during which the fraud was perpetrated, Afif Baltagi was able to facilitate a fraud using XPO as cover because of XPO's lack of clear organizational roles and responsibilities, inadequate safeguards, imbalanced incentives and measurements, lack of Human Resource (HR) development and training, and inadequate supervision of the Houston branch led to a fertile ground in which dishonest employees and fraudsters could prosper there.

Furthermore, based on the fact that Max Shook released tires to Adkins in October 2017, and that XPO communicated closely with Parlatore while practically ignoring Star Funding between May 2017 and December 2017, and the extensive log of documentary evidence between during that same period that was withheld by XPO legal due to privilege (Jorgensen pp 826-852), and the fact that XPO never appears to have investigated or taken any disciplinary action against Baltagi or anyone else for failure to stop the fraud even to the current day, it seems that XPO effectively facilitated role Adkins' Ponzi scheme, at least through its inaction.

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Figure 3: XPO's Management, Training, Measurements and Controls During the Roll-Up Period



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# 2.2 Lack of Clear Organizational Roles and Responsibilities

## 2.2.1 No Job Description with Baltagi's Offer Letter

Baltagi's offer letter was apparently delivered without a job description for the Branch Manager position (Baltagi, p. 59). This introduced ambiguity from the start, perhaps deliberately, around the company's view of his role and responsibilities, and it might at least partly explain why former employees have criticized the company for "unprofessionalism, lies, cheating contractors of owed money, [and] disorganization...Getting hired is easy. All that you need is a GED and no experience." <sup>4</sup>

## 2.2.2 Unclear Logistics / Forwarding Boundaries

The website and general company positioning seemed unclear about, or even deliberately blurry, on the distinction between Logistics and Forwarding, to the extent that customers (like GSL) and vendors (like Roadmaster) didn't know the difference between XPO Global Logistics and XPO Global Forwarding. (Musetti, 11; Hodgson, 117)

Executives in charge of Global Forwarding didn't know whether or not the organization was a separate legal entity from XPO Logistics, which has ramifications for cargo liability, so they should know. Komsky says that Forwarding and Logistics are not separate legal entities (Komsky, 30), but according to the company's SEC filings XPO Global Forwarding Inc. is a subsidiary <sup>5</sup> At one point he characterizes XPO Global Forwarding as a cost center, which is typically different than a for-profit legal subsidiary.

The name "XPO Global Forwarding" seems to imply that the organization was a *freight forwarder*, implying that it issued a Bill of Lading for transport, takes possession of the goods, is responsible for in-transit storage, while XPO claims that the organization was doing nothing more than *brokering* cargo ("all we do is broker the cargo," said Komsky). (Komsky, 105)

At least at the time of the fraud, it seems that the operations were run without regard to distinction between Logistics and Forwarding. Baltagi's paychecks came from XPO Logistics Inc., none from Forwarding, (Baltagi File (02385408x9D84A), 1). Also, email address protocols were the same across XPO entities. (Allen, 225)

Baltagi was not employed by XPO Global Forwarding, as Komsky claimed ("he was an employee of XPO Global Forwarding", per Komsky, 40). XPO Logistics, not XPO Global Forwarding, hired Baltagi and the documents conveyed contain no record of him being transferred to XPO Global Forwarding. (Baltagi File (02385408x9D84A), 23).

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<sup>&</sup>lt;sup>4</sup> Glassdoor.com, posted May 11, 2017. Last accessed June 14, 2021.

https://www.glassdoor.com/Reviews/Employee-Review-XPO-Logistics-RVW15011980.htm

https://www.sec.gov/Archives/edgar/data/1166003/000162828017001912/xpo201610-kexx21.htm

## 2.2.3 Confusing Organizational Relationships

Ian Oliver claimed he had only a "dotted-line" reporting relationship to Baltagi (Oliver, 67), but it's not clear if anybody would describe their relationship as a solid-line one. One employee described XPO as disorganized and "understaffed.<sup>6</sup>

By analogy, the agreement between XPO and RoadMaster was also ill-defined and implies that XPO was providing or at least managing the warehousing services, while RoadMaster was just providing square footage on its land. The XPO-RoadMaster relationship seems to rest on a warehouse lease agreement (Muzi, 811), which is an odd and insufficient basis for warehousing and storage services. In one recent client engagement, the client's agreement for third party logistics services consisted of a 72-page Master Services Agreement including 53 pages of detail about operations and rates.

In my experience, dotted line relationships usually lead to ambiguity and lack of accountability. Dotted line relationships like Oliver's to Baltagi should have been more clearly defined.

I have prepared organization charts, job descriptions, performance measurements, and RACI (Responsible, Accountable, Consulted, Informed) matrices, and workflows for dozens of clients over the years using much clearer and more descriptive formats for characterizing reporting relationships other than dotted lines. Their organizations function with far more accountability than exhibited at XPO's Houston branch.

## 2.2.4 Collective Abrogation of Accountability

As a result of a high rate of turnover, low supervision, and priority on revenue growth over customer satisfaction, most managers seem to have let the others deal with problems, creating a collective abrogation of responsibility.

- Nobody ever responded definitively to Star Funding's exasperated email looking for an answer and for documentary proof that Star owned the tires (Jorgensen, 71 and Exhibit 213)
- Nobody ever responded definitively to Brad Jacobs' request to take care of the Star Funding problem or reply to Star Funding's irate email. (Jorgensen, 71 and Exhibit 213)
- Henrik asked Afif to follow up re why the 12 tires disappeared, but Afif didn't respond. (Jorgensen, 84)
- Afif referred them to Parlatore for more detail, and Henrik doesn't know if anybody called Parlatore. (Jorgensen, 80)

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<sup>&</sup>lt;sup>6</sup> Glassdoor.com, posted May 11, 2017

• XPO Legal appears to take direction from Adkins and Parlatore adverse to GSL's interests. (Jorgensen, 849)

Moreover, procedures followed in the CEO's office seem to have instituted a systematic process to ignore customer problems and shield the CEO from legal accountability.

- The Assistant to the CEO systematically avoided sharing any legal correspondence with the CEO, enabling the CEO to maintain plausible deniability of all legal problems and the Legal Department to assert legal privilege over almost any documentary evidence. (Friedman 82)
- The Assistant to the CEO responded to emails using not her own name, but the CEO's email account, so the CEO could always say he wasn't responsible for any emails that came into or went out of his email box. (Friedman 18)
- The workflow of CEO communication was designed in a way that deliberately excluded follow-up, regardless of the importance of the matter (Friedman 74)

XPO had the mechanisms to deal with this situation, and there is no indication they invoked them. Here's what should have happened:

- Henrik should have called the whistleblower hotline (called out in the XPO code of conduct manual) in 2016 when Afif wouldn't provide a clear explanation of where the 12 tires went.
- XPO Legal should have asked the Audit Committee to establish an Internal Audit Committee to do KYC on all parties in 2016 and investigated all XPO employees for a potential role in the scheme.

Clear job descriptions, vendor contracts, and workflows with signature authorization help to clarify responsibilities and promote accountability. Leading companies like UPS and Toyota have also implemented Total Quality Management systems to assemble employee feedback and engage in continuous improvement.

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## 2.2.5 Baltagi's Role and Responsibilities

To understand Afif Baltagi's responsibilities in light of such undefined parameters, we need to look to industry practice. Based on XPO's claim that "he was an employee of XPO Global Forwarding" (Komsky, 40), we consider what his job function would have been at a typical freight forwarding company.

Per freight forwarding industry practice, Baltagi's duties and responsibilities as Branch Manager would have included having direct communications with the customers and coordinating all aspects of the supply chain management services that XPO was providing at its Houston facility. Such supply chain management service would have included receiving goods for a customer, holding goods for a customer, releasing goods for customers, communicating with third parties regarding the status of the goods shipment, arrival, inspection, and release expectations, and executing documents, such as warehouse receipts and other day-to-day contracts or agreements, relative to the supply chain services XPO was providing. Baltagi's duties would also have included coordinating with vendors as needed to fulfill the supply chain services XPO was offering. These services were all being performed by Baltagi in the course and scope of his job duties as XPO's Branch Manager in the tire transactions that formed the basis of the Ponzi Scheme that defrauded Great Southland Limited, and many others.

The fact that at least six XPO employees acknowledge Baltagi's role in coordinating shipments for the Adkins companies further confirms that Baltagi's customer-facing role was known and acknowledged within XPO, and XPO believes they are the ones providing the service for these tires – not Roadmaster. Therefore, managing end-to-end freight shipments including storage was clearly in the course/scope of Baltagi's employment.

- 1. Brad Jacobs is copied on a letter and email (in October 2015) about an agreement between XPO Global Logistics ("XPO") and Landash Texas LLC (Landash") and a Bill of Sale from Landash to EPK for title to 24 Goodyear tires.
- 2. Cindy Connor says to customers that "Afif is in charge of this inventory and all procedures, and contracts" (Baltagi, 265)
- 3. Henrik Jorgensen and Cindy Connor are copied on other Baltagi emails related to the release of certain Star Funding tires. Roadmaster is not referenced in this process.
- 4. Stephanie Jones from XPO's accounting department asked if XPO is still moving loads for Adkins company. (Baltagi, 333)
- 5. Susan Santo XPO in-house legal counsel reported that XPO charges \$800/month to hold the tires and will charge \$1,000 to move them out. Note here that XPO's counsel is not claiming this is Roadmaster's charge or that Roadmaster is doing anything. Again, XPO is providing the service and this is direct from their legal department. (Baltagi, 339)
- 6. Susan Santo tells Parlatore that XPO took direction from him and Adkins relative to Star. Nowhere does XPO's counsel say this is all on Roadmaster. This expressly states that XPO is taking direction from Adkins. (Baltagi, 343)

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- 7. Max Shook, Baltagi's supervisor, asked for other security agreements "we" signed relative to the tires. No point is made that this was not approved or outside the scope of the services or that there was anything inappropriate about that at all. (Baltagi, 511)
- 8. Susan Santo from XPO Legal details the process of releasing tires. "I've provided the serial numbers to Afif, and you can arrange any purchase inspection directly with him." Again, nothing in this implicates Roadmaster or suggests that what Afif was doing involved anything but him doing his job.
- 9. Afif emailed a number of people who may have been with XPO in 2015 regarding Star Funding advising no relation between XPO and Roadmaster "we rent space from them…No relation." (Baltagi 825)

Other freight, logistics, and industrial companies have unique business plans, mission statements, and organizational structures for their subsidiaries. In fact, I have developed these for companies such as FedEx, UPS, Iron Mountain, and the air cargo divisions of Air Canada, American Air, British Air, Delta, KLM, Southwest, and Swissair, for example.

# 2.3 Inadequate Safeguards and Precautionary Processes

The most striking management deficiency is the inadequacy of safeguards and precautions to prevent fraud. XPO seems to have been remiss in ensuring process safeguards concerning information integrity. Since a great deal of the information flows into financial reporting – shipments become revenue and withdrawals from inventory become liabilities, if not to XPO then to its customers in its duty of care – this sloppiness may constitute a violation of Section 404 of Sarbanes-Oxley, which was enacted in 2002 in response to widespread fraud including at Enron.

#### 2.3.1 Apparent Lack of Legal and Financial Safeguards

It's difficult to imagine there was ever an evaluation of safeguards, given the series of events that unfolded at XPO while this fraud played out. SOX 302c stipulates that the signing officers "have evaluated the effectiveness of the issuer's internal controls…" (SOX p33).

XPO's behavior and communications in this case seems to have taken place in an environment devoid of safeguards. For example, Max Shook authorized Beatriz Carmona at Roadmaster to allow Jason Adkins remove 26 tires on 11/9/17 (Shook, 239), unless XPO Legal XPO instructed him to do so, which would have been irresponsible, given that GSL filed a legal complaint about its interest in the tires in August 2017.

XPO could have had stronger governance in place but chose not to, according to an investor group called Spruce Point, which wrote in 2018: "Spruce Point has been following XPO Logistics (NYSE: XPO) for years, a transportation and logistics roll-up founded by Bradley

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Jacobs, co-founder of United Rentals (URI) which collapsed in an accounting scandal during his leadership."<sup>7</sup> Another source elaborates:

"CEO Jacobs has surrounded himself with a web of associates from his United Waste Systems and United Rentals days, companies where two of his former partners were convicted of accounting fraud and sent to jail. One recent XPO Director was sanctioned by FINRA, undisclosed to investors, for employing one of Jacob's former partners that was sent to prison. XPO's Audit Committee Director omits from his bio that he played a role in distributing securities related to Marc Drier's \$700m Ponzi Scheme. In addition, XPO's Director of Technical Accounting and Financial Reporting worked at KPMG and Xerox during a period both companies were charged by the SEC with fraud. These facts should give investors extreme caution." 8

## 2.3.2 Incomplete and Sometimes Erroneous Financial Documentation

Documentation appears to have been systematically incomplete and erroneous.

Forms were improperly filled out, incompletely filled out, and shredded upon receipt, and this appears to have been acceptable at XPO. For example:

- Max Shook, Ian Oliver, and Dominick Muzi accept Baltagi's vague, obtuse, and unclear emails, such as Conor's email about "our warehouse" and Baltagi's ambiguity while he gave XPO the runaround: "as I can recall there were 8 tires left from a year ago and nothing left." (Muzi, 731)
- Nobody from XPO signed the form that converted Afif Baltagi from an employee to a contractor, according to the Allen deposition (page 162).
- Employees are unaware of any document retention policy. (Allen, 218)
- The Assistant to the CEO routinely shreds all hardcopy documents. (Friedman 34)

The incompleteness of emails and HR forms flowed through to financial information. The fact that half the monthly 2015 revenue figures in a year-end 2016 report were blank in a January 2016 branch report went unnoticed, giving the impression the branch was doing better than it was, and thereby avoiding closer scrutiny. (Jorgensen, 43-44, 806).

Accurate and thorough financial information would have caught the aging receivables problem and could have potentially revealed the Ponzi scheme even before Adkins applied to GSL for a loan in March 2016.

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<sup>&</sup>lt;sup>7</sup> "XPO Logistics Inc." Spruce Point Capital Management. Accessed June 14, 2021. https://www.sprucepointcap.com/xpo-logistics-inc/

<sup>&</sup>lt;sup>8</sup> "Why XPO Logistics Appears To Be Using A Nearly Identical Playbook To United Rentals, Which Was Charged With Accounting Fraud." Seeking Alpha. Dec. 13, 2018.

XPO could have produced more accurate information through CargoWise or ERP systems like Oracle, which have comprehensive finance and accounting functionality. SAP is in use at XPO. (Armstrong, 7)

## 2.3.3 Loose Compliance with Established Policies

There appears to have been a gap between the official code of conduct and the actual behavior. Based on Muzi's testimony, it seems that he's never read the company policy manual. (Muzi, 415-417). Catherine Friedman, Bradley Jacobs Chief of Staff, testified that she had never even seen XPO's Code of Business Ethics. (Friedman, 52) In addition, the controls described in XPO's Code of Conduct and Ethics manual do not seem to be respected, according to the testimony I reviewed. Indeed, Komsky testified that Baltagi violated several provisions of the Code of Ethics, without any consequence. (Komsky, 92)

## 2.3.4 No Audits or Surveillance Systems

As noted on page 284 of XPO's Fraud and Code of Business Conduct and Ethics Employee Handbook Rollout, November 19, 2012, fraud in the transport industry is a known problem. According to the surveys referenced in the talking points, transport and logistics companies are more than twice as likely to experience severe fraud as companies in other industries. Due to the known risk, transport and logistics providers are very accustomed to maintaining diligent physical, photographic, and electronic surveillance over their facilities, their workflows, and their employees. Background checks are treated very seriously. Facilities are monitored, inspected and audited. Employees are drug-tested. Electronic access privileges and permissions are systematically and periodically updated, downgraded, or de-permissioned. (48619-49370, 284)

The MOR (Monthly Operating Review) process was insufficient at detecting financial irregularities, and there appear to have been no audits to back the MOR process up. For example, Henrik Jorgensen never traveled to Houston to find out about the missing tires problem; his actions were limited to email. He also never asked anybody else in IAH about the problem, conducted no audits, and did not count any tires (Jorgensen, 124). This absence of surveillance or inspection allowed Baltagi to issue documents, alleged by XPO to be unauthorized, while not copying anybody else at XPO, and to bury financial discrepancies. Furthermore, the fact that XPO does not audit warehouse documentation or bills of lading (Muzi 52-56) provided a security flaw that Baltagi exploited.

More rigor around the MOR, including periodic audits by independent auditors from Corporate (outside the reporting chain of those involved in branch management), would have uncovered the A/R problem. Boston Strategies International teams frequently need access to office space at clients that are using PwC, KPMG, and other accounting firms for financial and SOX-related audits in the same facilities.

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If anybody at XPO had reviewed Baltagi's company emails when Star Funding sought its inventory accounting in January, 2016 and more important when they complained to Brad Jacobs in May of 2016, they should have uncovered the entire fraud, as it was largely perpetrated through his XPO email address. Spot-checking of emails should also have uncovered the fraud. There was evidence of something amiss in January but by May GSL made it clear to XPO that there was big trouble. That is when XPO needed to do a deep dive and investigate what was going on. Their failure to do so let others fall victim and ratified his acts. This should have included an audit of the Houston branch and tracking of the company emails of Baltagi and his chain of command.

Some of my clients' IT departments monitor company email flow to insure that there is management and oversight of the employees. Such monitoring of emails enhances customer service and roots out nefarious conduct of employees, including fraud.

In addition, software vendors such as IBM, SAS, and others offer contract and fraud intelligence platforms that use document analysis and monitor email flow and provide alerts. Any of those programs are available to XPO and should be utilized for fraud monitoring.

#### 2.3.5 No Credit Holds

Max Shook did not put Midwest Coal on credit hold even after they defaulted (Shook, 126).

Then, even after the account was placed on credit card suspension, XPO management let Midwest Coal continue to place orders, accumulating a balance of \$41k that needed to be chased for payment. (Jorgensen, 50).

If XPO had shut down this account for failure to pay, it would have shut down the primary vehicle that was used for the GSL fraud, potentially preventing the entire crime.

## 2.4 Imbalanced Incentives and Measurements

## 2.4.1 No Customer Satisfaction Metrics

None of the 11 Key Performance Indicators (KPIs) on the Monthly Operating Review (MOR) measure customer satisfaction (although one metric, percent of shipments on-time, which is a common warehousing and logistics metric, gauges customer service levels).

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CGL Division Report Card 2014 - IAH May Jun 0 Mar Total/YTD 171,559 249,915 697,370 Achieve Actual 2014 - \$ 264,500 Budget - \$ Actual vs Budget % 225,000 235,500 76.25% 106.12% 310,000 415,000 395,000 1a Revenue 275.000 320,000 365,000 395.000 400.000 400.000 725,000 104.31% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 2014 Revenue Revenue 2013 - \$ Revenue 2014 vs 2013 120,226 196,916 4 142.70% 125.91% 224,239 0.00% 281,370 0.00% 385,929 0.00% 1b vs 2013 257,659 302,603 0.009 0.009 255,619 0.00% 651,938 82.41% 0.00% 0.00% 106.97% 7.72% 15.03% 0.00% 0.00% 0.00% 17.80% 0.00% 19.64% 0.00% 0.00% 0.00% 13.75% 2014 0.00% 0.00% Achieve GM % 17.26% 14.29% 92 35 2014 74 267 115 3 # of Shipments 142 93 103 129 116 90 # of Active 2014 68 4 Customers 2013 11 14 25 28 26 23 31 24 24 # of New 2014 11 NA NA % of Shipment 6 on Time 100.00% 97.22% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 98.31% 0.00% 1 International POD's - day 74 7 Days POD Domestic POD's - days 204 0 Blank POD's - # of o Finalization AR Balances 249,605 271,689 240,274 N/A 8 over 90 Days % of total receivabl 43.54% 41,01% 33.64% DSO Days 82 % of Domestic 10 Revenue vs % 95.91% 90.25% 94.57% International Revenue **Key to Rankings** 1a Achieve Revenue Green - 100% + of budgeted number, Yellow - 95% to 99.9% of budget, Red - Less than 95% of budget Green - equal to or exceed 2013 revenue, Yellow - 95% to 99.9% of 2013 revenue, Red - Less than 95% of 2013 revenue Green - Equal to or exceed 2013 GP%, Yellow - Within 95% to 99.9% of 2013 GP%, Red - Less than 95% of 2013 GP% 1b 2014 vs. 2013 2 Achieve GM% Number of Shipments Green - 100% or more of 2013 shipments, Yellow - 95% to 99.9% of 2013 shipments, Red - Less than 95% of 2013 shipments
 Number of Active Custome Green - Equal to or more customers than 2013, Yellow - 95% to 99% of 2013 customers, Red - Less than 95% of 2013 customers 5 # of New Customers Green - Top 1/3 of stations with new customers, Yellow - Middle 1/3 of stations for new clients, Red - Bottom 1/3 of stations for new clients Green - 98% on time plus, Red - Less than 98% 6 Shipments on Time 7 POD to Finalization Green - Top 1/3 of stations with finalization, Yellow - Middle 1/3 of stations for finalization, Red - Bottom 1/3 of stations for finalization Red - Bottom 1/3 of stations for AR over 90 Red - Bottom 1/3 of stations for AR over 91 Red - Bottom 1/3 of stations for 9 DSO Days Green - 42 days or less, Yellow - 43 to 45 days. Red - 46 days plus 10 % Domestic vs. Internation: No Ranking **EXHIBIT** 352 PLAINTIFF

Figure 4: Branch Key Performance Indicators<sup>9</sup>

Customer satisfaction is a key performance indicator of supply chain management effectiveness. The below scorecard from my book Guide to Supply Chain Management (The Economist, 2009) as two top-level results metrics of effective supply chain organizations.

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<sup>&</sup>lt;sup>9</sup> Jorgensen deposition, p. 687.

Figure 5: Supply Chain Balanced Scorecard<sup>10</sup>

	ECONOMIC VALUE ADDED  Rationalisation: operating cost   Synchronisation: asset utilisation   Customisation: margin   Innovation: revenue						
PRIMARY RESULTS METRIC	Net profit margin	Return on net assets (RONA)	Gross profit margin	Revenue growth			
SUBSIDIARY ESULTS METRIC	COGS Reduction in COGS Cost per unit Customer segment profitability Direct labour Direct product profitability Inbound freight Order fulfilment costs Order fulfilment lead times Outbound freight Diverhead cost Total Ianded cost Total product costs Total roduct costs Total supply chain management costs	FIXED ASSETS Asset turns Return on capital employed Asset utilisation Capital productivity Return on investment WORKING CAPITAL Cash flow to sales F6 inventory carry cost Inventory carrying cost Inventory value	Overall satisfaction Customer complaints	Revenue growth rate % of sales from products introduced in last 12 months % of total SKUs introduced in last 12 months Customer share NPI cycle time Decrease in NPI cycle time Decrease in NPD cycle time			
PROCESS METRICS	% spend sourced in 2 years % spend outsourced % SKUs value-engineered Decrease in no. of parts per unit Inventory turns Cost per delivery Yishility to end customer Cost per ECO No. black belts at core suppliers % materials on consignment % excess cost designed in % transactions paperless	% production lines on JIT Frequency of S&OP meetings No. black belts on staff Frequency of sharing demand forecasts with suppliers Time since constraints review % SKUs on ELDP % perfect orders % peak % transactions via EDI or XML Standard deviation of delivery time Mean standard error % direct ship	% SKUs with house of quality % interaction history accessible % transactions with customer data % customers segmented % customers segmented % product tine customised % product tine customised % product tine personalised % transactions up-sale offered % transactions cross-sale offered Customer data integration? Time to flex up 20% Order to ready for shipment time On-time delivery vs promise time Duration of late orders Response accuracy Response time to enquiries	Time to feedback test market information First prototype % of EVA % overlap design and engineering Stage of supplier involvement Stage of customer involvement Total marketing cost Response time from break point % SKUs via assortment planning % SKUs designed with supply chain involvement			

The singular focus on growth, and corresponding lack of attention to customer complaints, led to Star Funding's complaint and subsequent litigation getting buried, and was consistent with company behavior at the time, as evidenced by this reviewer on Glassdoor review:

"This company was great when Con-Way Freight, then XPO cut staff extremely causing everyone to do the work of 2-3 people thus lowering customer service, causing more damaged freight and very angry customers, only cared about numbers and stock market and not employees and customers as Conway did. It is a shame they lost some very good managers, sales reps, and customer service reps who never missed a day and that were very accurate and dedicated to the business then made them do the job that for many years 2-3 people did was put onto 1 person, and lack of warehouse staffing caused to much of a hurry thus destroying the customers freight, body hoods come in looking like bumpers.. Shame on you XPO you are not an LTL freight company." 11

#### 2.4.2 Unreliable Financial Statements

XPO may be at risk of failure to disclose legal and financial risks to investors, as the total amount of the GSL and related cases could total nearly \$40 million (assuming punitive

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<sup>&</sup>lt;sup>10</sup> Source: Jacoby, David Steven. Guide to Supply Chain Management. The Economist, 2009.

<sup>&</sup>lt;sup>11</sup> Glassdoor.com, posted May 11, 2017

damages), and the company has not mentioned it in its 2017, 2018, 2019 and 2020 10K reports. Disclosure may have raised concerns about the company apparently siding with fraudster Jason Adkins, which may have had lasting reputational impact.

Failure to disclose liabilities would be consistent with the firm's previous behavior, according to analysts. Spruce Point, the investor group mentioned previously, concluded that:

"Based on our forensic investigation, we believe XPO is executing an identical playbook to URI – resulting in financial irregularities that conveniently cover its growing financial strain and inability to complete additional acquisitions despite repeated promises. Given its unreliable and dubious financials, \$4.7 bn debt burden, inability to generate sustaining free cash flow, and dependency on external capital and asset sales, we have a worst-case terminal price target of zero."

The complete Spruce Point report can be found in Appendix A.

Most companies deploy independent SOX compliance audits to catch and purge unreliable data, including data on revenue at the shipment level, before it enters their financial statements.

# 2.5 Lack of HR Development & Training Processes

No formal training seems to have been given to Baltagi or his managers or subordinates. The XPO employee handbook was evidently distributed with acknowledgment, but it seems as though nobody has read it.

Ironically, XPO's predecessor company before the roll-ups, Concert Logistics Group, worked from an extensive Operations Training Manual (Oliver, 199) that resembled training that is offered through supply chain associations like the Association for Supply Chain Management, and the American Society for Transportation & Logistics, which recently merged together. It instructed new hires on the right way to execute transactions using approved information systems like CGLShip software. The manual instructed on creating documents such as:

- New customer shipping agreement
- Sales collateral standard document templates
- Standard inspection documentation
- Cost calculations
- Standard shipping documents

## 2.5.1 Lack of Training and Employee Feedback

Dominick Muzi, who never finished college and was serving as a President of Global Forwarding. During his time at CGL, he says he received no training (Muzi, 429). Neither was Baltagi given training, according to Oliver. (Oliver, 22) In addition, it's not clear that there was

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any feedback loop to learn from them when employees quit or were fired. Muzi could not confirm that Baltagi had an exit interview, which could have been particularly useful in diagnosing the problem of his involvement in the Adkins fraud. (Muzi, 429)

### 2.5.2 No Discipline for Breaches

XPO seemed to avoid discipline for breaches, even when performance gaps were explicit and clear. One employee advised the company's management to "set standards and actually apply them."

- Dominick Muzi is apparently unaware of *anybody* at XPO ever being reprimanded (Muzi, 471-474)
- Max Shook effectively excused Baltagi by allowing him extraordinarily liberal terms when passing from an employee to a contractor. The legal language was very thin, considering the facts known at the time. In addition, the 28 days notice provided to him allowed Baltagi ample time to cover his tracks by, for example, deleting emails and text messages.
- Even today Afif Baltagi is in violation of XPO's April 2018 termination letter, without consequences: on LinkedIn he lists himself as a Branch Manager at XPO, while simultaneously working for World Express Cargo. 12

Given the pattern of avoiding disciplinary actions, one might forgive observers from wondering if Baltagi's compatriots and superiors (especially Muzi, Oliver, Komsky, and Huntley) and subordinates (especially Connor and Russey), and even the Legal team (which coordinated extensively with Adkins) enabled Baltagi's facilitation of Adkins' fraud at moments such as the following:

- 1. Misleading GSL/Paladin by giving Hodgson a tour of the facility and representing it as being managed by XPO and himself as an authorized agent were other XPO representatives present or aware of this?) (Hodgson 1, 358; Hodgson 2, 325)
- 2. Implicitly accepting Adkins' terms of escrow in an email chain Baltagi did not cc any XPO employees, but were any on bcc or aware of it? (Hodgson1, 407)
- 3. Receiving and implicitly accepting falsified warehousing receipts from Jason Adkins for GSL tires at the Houston facility were any XPO employees aware of the documents? (Hodgson 2, 325)
- 4. Taking bribes totaling at least \$230,000 from Adkins and his companies in the form of:
  - a. A Mercedes (Adkins, 95-97; Adkins, 349; Jason 351-352)

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<sup>&</sup>lt;sup>12</sup> LinkedIn, Accessed May 28, 2021. www.linkedin.com/in/afif-baltagi-13921643

- b. At least six cash payments from Adkins totaling \$100,000 (did any others at XPO receive payoffs)?
  - \$37,500 on June 22, 2016 (Landash Corp bank records, 124)
  - \$10,000 on September 22, 2016 (Landash Corp bank records, 223)
  - \$15,000 on September 26, 2016 (Landash Corp bank records, 225)
  - \$12,500 on October 4, 2016 (Landash Corp bank records, 246)
  - \$12,500 on December 19, 2016
  - \$12,500 on December 21, 2016
  - \$18,500 on January 25, 2017 (Adkins, 349)
- c. At least \$130,000 in payments to his wife, Mazen Baltagi;
  - \$50,000 on January 13, 2016
  - \$80,000 on March 16, 2016 (Landash Corp bank records, 11)
- d. Forgiveable loan(s)
- 5. Facilitating fraud by signing false security interest letters so other lenders such as Vecron and Abington would release the funds did any other XPO employees help produce or deliver these? (Adkins, 137-8)
- 6. Signing XPO documents that he was allegedly unauthorized to sign, and which were misleading and false (Adkins 731 Landash Jan 2015. Adkins 681 Abington-security interest in tires held at bonded warehouse, Adkins 690 Midwest Coal-ownership interest in tires, etc.)

In addition, XPO did not punish the Houston branch for being in the bottom third in six of 11 KPIs during 2014 and 2015. In contrast, XPO's performance reviews for Baltagi were "exceeded expectations" in every period except December 2015. 13

Managers should have stopped Baltagi from false misrepresentations at multiple times during the fraud. They should have, for example:

• When Star Funding emailed Baltagi and copied in his supervisors in January, 2016 XPO should have immediately begun an audit of the inventory and business practices of the Houston branch. Komsky testified that Baltagi's actions in January, 2016 with Star Funding were outside his authority; therefore, an immediate audit response was required of XPO<sup>14</sup>, especially by May 2016 when Star initiated litigation against XPO. The audit should have been in-person with a complete accounting of all tires,

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<sup>&</sup>lt;sup>13</sup> XPOAB00013579 CONFIDENTIAL

<sup>&</sup>lt;sup>14</sup> Komsky's testimony that this was outside the scope of his duties, however, is not correct. Baltagi's activities were squarely within the scope of his duties for the reasons set forth herein. XPO provides supply chain management and logistics services, which is exactly what Baltagi was supposed to do in his job and what he was doing relative to the tire transactions.

customers, documents, emails, activities, and revenue associated with the tire transactions. This would have revealed the fraud and ended the Ponzi scheme.

- Put a forwarder on Baltagi's email to monitor his communications, and upon seeing the fraud, disciplined him for accepting the terms of escrow by email when Legal discovered it in May 2016 when Star Funding emailed Brad Jacobs.
- Fired Baltagi when the First Amended Complaint was filed.
- Ended Baltagi's contractor agreement in July 2017 and compelling him to remove XPO from his LinkedIn profile even today would at least send a message to staff that the company will uphold the principle of disciplining violations of the company code of conduct.

These precautionary measures are not unique. All trucking companies use GPS sensors to track vehicles. UPS, FedEx, DHL, and other parcel carriers use handheld devices that track vehicles, cargo, and drivers along with it. All professional warehousing companies use cameras to monitor warehousing operations. And all reputable companies fire employees that violate conduct rules.

# 2.6 Inadequate Supervision

## 2.6.1 No Regional Management

Based on the testimony, XPO had no supervision in the South or in Houston. Max Shook, Ian Oliver, and Dominick Muzi were in Chicago (Carol Stream). Henrik Jorgenson was in Chicago and then Europe. Joshua Allen was in Louisville, Kentucky. Joe Samuel was in Dallas. No supervisor was in Houston at any point except for an occasional day trip.

The inadequate regional supervision led to tricks. "When the cat's away, the mice will play," goes the expression. Branch managers are known to engage in nepotism, special favors, financial and accounting sleight-of-hand, and personal use of business property. Companies in the logistics business know they need to keep a lid on such activities, and that means surveillance, monitoring, audits, and frequent spot-checks.

Most of my clients address the issue through a regional management structure. The company or business unit is divided into a manageable number of regions (usually three to six in the United States). The branch managers report to the region managers, who report to the business unit head. Regional supervision would have kept tighter control over Baltagi.

## 2.6.2 Inconsistent Supervision due to High Turnover

The length of service of Shook and other supervisors of Baltagi was so short that they did not see the events unfold. Between 2015 and 2018 it appears that Baltagi was managed by at least four managers: Shook, Oliver, Jorgensen, Allen. The bosses of those four also churned extensively,

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including Katrina Lidell (2020), Joshua Allen (as of March 2018), ex Dominick Muzi (2017), Henrik Jorgensen (2016), and Ian Oliver. So, nine people were responsible for overseeing the Houston branch over four years. At an average of 5.3 months each (48 months divided by nine people), Baltagi knew he could pull the wool over their eyes. A supervisor with a longer tenure would have seen the problem escalate.

The aforementioned ex-employee blamed the churn on the company's focus on the stock market and treating its people as expendable:

"Supervisors do not help as much as should and do not even know most of the job of those they are supervising so are of no assistance when needed or available to help or teach so, you end up training yourself how to do new tasks through trial and error. When staff and management ask for help they are threatened to be replaced. Months of telling them need help and refuse to give the staffing needed putting everyone under undo [sic] stress and lowering customer service. Advice to Management: Start caring about your employees and customers instead of your numbers and stock market, you have lost allot [sic] of good dedicated employees by not acknowledging the help they asked for in surveys, through HR and cut staff to give managers nothing to work with and csr's [sic]trying to do too many jobs at once causing severe undo [sic] stress and loosing [sic] some very valuable, knowledgeable employees." 15

## 3 Conclusion

It is my conclusion that Afif Baltagi was doing his duty at XPO during the course of the fraud perpetrated by Jason Adkins, and that a combination of a Lack of Clear Organizational Roles and Responsibilities, Inadequate Safeguards and Precautionary Processes, Imbalanced Incentives and Measurements, a Lack of HR Development & Training Processes, and Inadequate Supervision enabled him to facilitate Adkins' fraud against GSL, perhaps with the tacit or even active cooperation of other XPO employees.

Baltagi's duties and responsibilities as Branch Manager included having direct communications with the customers and coordinating all aspects of the supply chain management service XPO was providing at its Houston facility. The services he offered to GSL and others were all being performed by Baltagi in the course and scope of his job duties as XPO's Branch Manager.

XPO's lack of clarity around Organizational Roles and Responsibilities enabled the fraud. XPO as a company:

- Hired Baltagi without a job description in his offer letter, inviting him to invent the role as he went along.
- Maintained a blurry line between Logistics and Forwarding, which enabled it to operate an asset-lite network at low cost as a broker while representing itself as a

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<sup>&</sup>lt;sup>15</sup> Glassdoor.com, posted May 11, 2017.

premium full-service forwarder. This could have inspired Baltagi to profit by further misleading customers to make quick money.

- Made ambiguous and dotted-line relationships the norm and accepted high supervisor turnover, which enabled Baltagi to operate largely unsupervised.
- Systematically deflected customer complaints and legal actions away from the CEO, along with a policy of not following up on them, delayed remedial actions and insulated management from accountability.

XPO's Inadequate Safeguards and Precautionary Processes established a culture that supported reckless and unchecked behavior. XPO:

- Failed to adequately supervise and audit branches
- Maintained inaccurate financial records
- Systematically failed to enforce policies in its Employee Code of Conduct
- Failed to implement audits or surveillance systems that could have checked errant behavior
- Did not restrain customer orders, even if their credit was bad

XPO's Imbalanced Incentives and Measurements encouraged revenue growth above customer satisfaction and sustainable growth. XPO:

- Had no customer satisfaction metrics
- Didn't follow up on customer complaints
- Published financial statements that have failed to notify investors about the Adkins Ponzi scheme exposure over the 2016-2021 period

XPO's Human Resource Management function was ineffective in that it:

- Failed to train employees to a level of competence where they would recognize and troubleshoot problems and violations of company policy
- Failed to discipline employees, even for egregiously breaching multiple policies

XPO's supervisory processes and resourcing were inadequate to protect against incompetence, let alone fraud. There was:

- No regional management close enough to the branches for frequent oversight
- Inconsistent supervision due to extremely high turnover in the management ranks.

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# 5 Appendix: Spruce Point Capital Investor Report

XPO Logistics, Inc. (NYSE: XPO)

# Investment Research Report

Spruce Point has been following XPO Logistics (NYSE: XPO) for years, a transportation and logistics roll-up founded by Bradley Jacobs, co-founder of United Rentals (URI) which collapsed in an accounting scandal during his leadership. Based on our forensic investigation, we believe XPO is executing an identical playbook to URI – resulting in financial irregularities that conveniently cover its growing financial strain and inability to complete additional acquisitions despite repeated promises. Given its unreliable and dubious financials, \$4.7 bn debt burden, inability to generate sustaining free cash flow, and dependency on external capital and asset sales, we have a worst-case terminal price target of zero.

XPO has completed 17 acquisitions since Jacobs took control in 2011 and deployed \$6.1 billion of capital. Yet by our calculations, the Company has generated \$73m of cumulative adjusted free cash flow in an expansionary economic period. In our view, this is indicative of a failed business strategy yielding a paltry 1.2% return on invested capital. XPO is dependent on external capital, asset sales, and factoring receivables to survive and is covering up a working capital crunch that can been seen by bank overdrafts – just like Maxar Technologies (MAXR). As credit conditions tighten, cost of capital increases, and XPO's business practices come under greater scrutiny (eg. U.S. Senate), its share price could swiftly collapse in Enron-style fashion.

CEO Jacobs has surrounded himself with a web of associates from his United Waste Systems and United Rentals days. Two of his partners, Mike Nolan and John Milne, were convicted of accounting fraud. XPO's director G.C. Andersen recently employed Milne at his financial advisory firm during a time the company worked on private placements (potentially XPO's deals) and was sanctioned by FINRA. This wasn't disclosed to investors. XPO's audit committee director, Adrian Kingshott, has omitted from his bio his role in the distribution of note securities in the \$700m Marc Drier Ponzi scheme.

In our opinion, XPO has used a nearly identical playbook from United Rentals leading up to its SEC investigation, executive felony convictions, and share price collapse. We find concrete evidence to suggest dubious tax accounting, under-reporting of bad debts, phantom income through unaccountable M&A earn-out labilities, and aggressive amortization assumptions: all designed to portray glowing "Non-GAAP" results. Additionally, we provide evidence that its "organic revenue growth" cannot be relied upon, its free cash flow does not reflect its fragile financial condition, and numerous headwinds will pressure earnings.

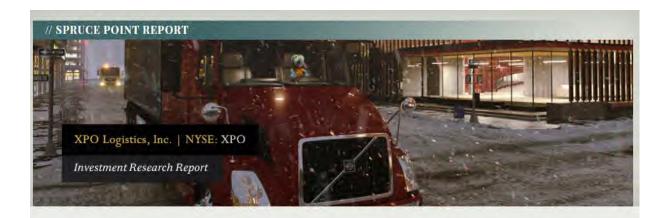
XPO insiders have aggressively reduced their ownership interest in the Company since coming public, and recently enacted a new compensation structure tied to "Adjusted Cash Flow Per Share" – defined in such a non-standard way that it is practically meaningless. Conveniently, it ignores any measure of capital efficiency, which is critical in the capital intensive transportation

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industry, an would expose XPO's poorly constructed roll-up. In our opinion, the Board is stacked with rubber-stamping Jacobs loyalists, none of which have requisite experience in the transportation and logistics industry. As noted above, the Board includes an audit committee member who abetted a notorious \$700m Ponzi scheme.

XPO has recruited 19 brokers to cover it, with only 1 "Sell" opinion and an avg. fantasy price target of \$114 (implying 90% upside). No analyst has conducted a forensic look at XPO's earnings quality, or revealed its Board and management's connections to convicted felons. XPO promotes itself to investors as a "technology" company and how it uses "robots" for warehouse automation, but ignores its growing financial strain, precarious \$4.7 billion debt load, and inability to hit its cash flow target. Warren Buffett famously said, "Only when the tide rolls out do you know who as been swimming naked" – words of wisdom for XPO shareholders. A crisis of confidence in management and a loss of access to capital could wipe out shareholders. In the interim, we see 40% - 60% downside risk as the market reassess XPO's earnings quality, outlook, and sum-of-parts multiple.

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## XPO Logistics Inc.

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- XPO has completed 17 acquisitions since Jacobs took control in 2011 and deployed \$6.1 billion of capital. Yet by our calculations, the Company has generated \$73m of cumulative adjusted free cash flow in an expansionary economic period. In our view, this is indicative of a failed business strategy yielding a paltry 1.2% return on invested capital. XPO is dependent on external capital, asset sales, and factoring receivables to survive and is covering up a working capital crunch that can been seen by bank overdrafts just like Maxar Technologies (MAXR). As credit conditions tighten, cost of capital increases, and XPO's business practices come under greater scrutiny (eg. U.S. Senate), its share price could swiftly collapse in Enron-style fashion.
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- In our opinion, XPO has used a nearly identical playbook from United Rentals leading up to its SEC investigation, executive felony convictions, and share price collapse. We find concrete evidence to suggest dubious tax accounting, under-reporting of bad debts, phantom income through unaccountable M&A earn-out labilities, and aggressive amortization assumptions: all designed to portray glowing "Non-GAAP" results. Additionally, we provide evidence that its "organic revenue growth" cannot be relied upon, its free cash flow does not reflect its fragile financial condition, and numerous headwinds will pressure earnings.
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  READ MORE...

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# 6 Appendix: Summary Biography of David Steven Jacoby

David Steven Jacoby, MBA, CFPIM, CSCP, CIRM, CPM, CTL

David Jacoby has been consulting for over 30 years in supply chain management, operations strategy and performance improvement. He wrote Guide to Supply Chain Management (The Economist, 2009) and multiple other supply chain books for major publishers, and has contributed over 300 speeches, articles and webcasts to publications including the Supply Chain Management Review and Supply Chain Quarterly.

His relevant experience includes the following projects and roles:

- Evaluated international growth strategies, including freight forwarding truckload, and less-then-truckload carrier segments, and whether or not to enter new LTL markets in Europe.
- Deployed routing technology and standardized work methods & standards, storage & shuttle configurations, and organization and compensation structures for a less than truckload service provider.
- Developed valuation models and scenarios during due-diligence for a multimodal (rail/ocean) merger.
- Led a Benchmarking Center of Excellence for A.T. Kearney. Conducted dozens of benchmarking projects for equipment, parts and component distribution in automotive, medical, electronics, and other diverse industries.
- Overhauled logistics at a retailer with regional operations, in a two-year project that graduated from a pilot program through an implementation program.
- Led several process improvement teams during a multi-year effort at a multinational vehicle manufacturer, with sequential consulting projects in Europe, Latin America, and the US.
- Established a growth strategy and initiated partnership meetings between a consumer products company and international 3PLs.

He has taught graduate school Operations Management at Boston University and consulted at several global consultancies, including Kearney, Norbridge, and Temple, Barker & Sloane.

He holds an MBA from the Wharton School, a Masters in International Business from the University of Pennsylvania's Lauder Institute and a Bachelor of Science in Finance and Economics from the University of Pennsylvania, where he did coursework at the Université de Compiègne (France) and Delft Institute of Technology (Netherlands). He is also a Certified Fellow in Production and Inventory Management (CFPIM), Certified in Supply Chain Management (CSCP), Certified in Integrated Resource Management (CIRM), Certified in Purchasing Management (Lifetime C.P.M.), and Certified in Transportation and Logistics (CTL). At the International Supply Chain Education Alliance (ISCEA), he is a member of its Ptak Prize Selection Committee.

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# 7 Appendix: Resume of David Jacoby

## Work Experience

**Boston Strategies International (BSI), Inc.**, **President, 1998 – present,** a consultancy that provides digital solutions and outsourced services to make supply chains more innovative, agile, resilient, secure, sustainable, and customizable. Built a sales and project delivery network encompassing international partners in a dozen countries, plus nearly two dozen channel partners and technical specialists. Project examples include:

- Developed a methodology to help the US Department of Transportation account for supply chain benefits of large-scale infrastructure projects. By using the 'supply chain benefits' method, the US will be on a path to approve 156% more capex for large-scale projects over the next 23 years.
- Evaluated international growth strategies for one of the world's largest integrated transportation carriers, specifically the decisions whether to enter new freight and LTL markets.
- Led a team that redesigned the logistics network and the procedures for distribution and warehousing of maintenance and repair parts to 260 sites belonging to the New York City Housing Authority.
- Led a team that identified 'hard' savings for the largest company in the world throughout a six-year supply chain analysis program. Benefits included a 7% reduction in capital expenditures, 1% lower operating costs, a 61% throughput increase through improvements in productivity and reductions in lead time for critical equipment, and 2% lower inventory carrying costs due to lead time reductions.
- Led a team that saved 13% on a \$45 billion capital project for a European company by designing a master supply chain strategy and procurement plan.
- Economist, Contributing Editor (while consulting at BSI). Researched, conducted surveys, and wrote 11 custom 'thought leadership' papers on supply chain related topics for SAP, Microsoft, Cisco, and other clients. Presented results at international conferences. Titles included, for example: The New Face of Purchasing; RFID Comes of Age; Chinese Third-Party Logistics Market Analysis and Forecast; and Unleashing the Power of Customer Data.
- Boston University, Lecturer, Graduate School of Management, Department of
  Operations Management (while consulting at BSI). Taught 35 graduate students per
  semester using a combination of case studies, lectures, and exercises. Topics included,
  for example: constraints management, statistical process control, quality management
  and Six Sigma, inventory and just-in-time, mass customization, service operations
  management, and supply chain strategy.

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Norbridge Inc., Principal, Transport & Logistics, 1996 – 1998 (Concord, MA). Helped global rail and intermodal carriers, auto manufacturers, distributors and logistics service providers improve operations (e.g., purchasing, manufacturing, transportation, and maintenance) through benchmarking, demand forecasting, process redesign, planning and scheduling, materials management, and equipment/infrastructure planning. Clients included companies such as FedEx, Chrysler, and CSX. Promoted from Senior Associate.

- Supported operational integration with competitive analyses and capacity strategies for the intermodal, merchandise, and bulk businesses during four phases of a \$10 billion rail merger.
- Managed numerous multi-party benchmarking and best practices studies, including two that involved an annual parts logistics conference.

A.T. Kearney Inc., Manager, Procurement Logistics and Supply Chain, 1989 – 1996 (based in New York, Chicago [two years], Paris [two years], Brazil [two years] and Atlanta, with project work in Eastern Europe and Asia. Served clients such as BASF, New Zealand Rail, France Telecom, Kowloon-Canton Railway, GM, Kraft, and Monoprix. Managed engagements in strategic sourcing, transportation, logistics/supply chain optimization, maintenance management, outsourcing and business transformation (reengineering), M&A, privatization, competitive intelligence, and marketing strategy. Led a Benchmarking Center of Excellence. Promoted from Associate. Featured projects include:

- Designed and implemented a major global sourcing program for vehicle makers in Brazil that saved 20% through a multi-year engagement that was conducted entirely in Portuguese. Also re-engineered the order fulfillment process of CKD (completely-knocked-down) trucks, reducing lead time by 30% and cost by 35% for the activities in scope.
- Assessed the business strategy, base case, forecast scenarios, and valued an Australasian railway, paving the way for its \$328 million sale.
- Evaluated the financial viability of five multi-billion dollar capital projects for a Chinese freight logistics and passenger rail and ferry company, resulting in the decision to build a container train service, a harbor tunnel, and a high-volume strategically important switching yard.
- Built a case that helped a Canadian railroad successfully secure government approvals
  to build a cross-border double-stack freight rail tunnel by demonstrating that the
  construction and the ongoing operations would generate hundreds of jobs, and
  comparing that to a 'do-nothing' scenario, in which traffic flows and terminal utilization
  would create congestion and traffic delays.
- Co-managed a Benchmarking Center of Excellence that provided the basis for consulting projects that reduced costs and improved performance of hundreds of European companies in logistics, finance, manufacturing and maintenance.

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- Analyzed transportation rates and identified savings opportunities for chemicals, forest products, and food products shippers. Prepared workshops on negotiating with suppliers.
- Implemented a redesigned store logistics process, improving cash-flow and decreasing stockouts and markdowns for a French retail chain. Conducted a series of detailed pilot programs.

<u>World Bank</u>, Junior Economist (Consultant), 1985 (Tunis). Analyzed domestic resource cost of seven agricultural commodities in (potatoes, oranges, olives, dates, hard wheat, soft wheat, and barley). Follow-on mission based on a successful USAID project in the same ministry. The work, which was conducted entirely in French, presaged a major wave of free-market reforms.

Mercer Management Consulting Inc., Research Associate, International Trade Group, Research Associate, 1985 – 1987 (Lexington, MA, currently Oliver Wyman). Developed business and investment strategies, economic analyses, and decision support tools for maritime clients such as APL and Sea-Land, and a large number of ports. Also participated in World Bankfunded projects for the governments of Benin and Burundi.

- Architected and built key elements of a computer-based World Trade Forecasting Service that was subsequently sold to an econometric forecasting firm.
- Developed valuation models and scenarios during due-diligence for a ground-breaking multimodal merger.

#### Education

- MBA, Wharton School, University of Pennsylvania, Strategic Planning and Marketing, 1989.
- Master of Arts, <u>The Lauder Institute</u> of International Studies, University of Pennsylvania, 1989.
- Bachelor of Science (Economics), <u>University of Pennsylvania</u>. Finance and International Business, 1985. Courses at <u>Université de Compiègne</u> and <u>Delft Institute of Technology</u> and internships at Ford France S.A. and Frans Swarttouw B.V. (Netherlands).
- Certified Fellow in Production and Inventory Management (CFPIM)
- Certified in Supply Chain Management (<u>CSCP</u>)
- Certified in Integrated Resource Management (CIRM)
- Certified in Purchasing Management (Lifetime <u>C.P.M.</u>)
- Certified in Transportation and Logistics (CTL)

#### Certifications and Affiliations

Past President, Boston <u>APICS</u>. Past President, New England Roundtable of the Council of Supply Chain Management Professionals (<u>CSCMP</u>). Member, Institute for Supply Management (<u>ISM</u>) and American Society of Transportation and Logistics (<u>AST&L</u>, now part of the

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Association for Supply Chain Management). Member of the <u>Ptak Prize</u> Selection Committee, <u>International Supply Chain Education Alliance</u> (ISCEA).

## Languages

English (native), French (fluent), Portuguese (proficient).

#### **Publications and Interviews**

Note: Hyperlinks are provided to facilitate drill-down, however some older links may no longer be functional if the source file location has changed or been deleted.

#### **SELECTED BOOKS**

Guide to Supply Chain Management, The Economist Books (2009)
Optimal Supply Chain Management in Oil, Gas and Power Generation (PennWell, 2012)
Reinventing the Energy Value Chain: Supply Chain Roadmaps for Digital Oilfields through
Hydrogen Fuel Cells (PennWell, 2021)

#### **SELECTED OTHER PUBLICATIONS**

May 2019: <u>"Supply Chain Security Guidelines on Provenance."</u> For North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Supply Chain Working Group (SCWG).

April 2016: "Ofrecen Ahorros en Proyectos Energéticos." Interview of David Jacoby in El Norte Magazine, Mexico City.

April 2016: ""BSI offers \$2 Billion Savings in Energy Projects." Interview of David Jacoby in Negocioselnorte and Negocios Magazines, Mexico City.

January 2014: "<u>Traffic Jam: Is Your Supply Chain Ready for the Global Infrastructure Crisis?</u>" Interview of David Jacoby in APICS Advantage Magazine.

October 2013: "<u>Strategies for Managing Customer and Supplier Risks</u>," Interview of David Jacoby. Economist Intelligence Unit. Sponsored by Dun & Bradstreet.

January 2012. "<u>Rate Outlook.</u>" Presentation for the major annual multimodal "panel of experts" webcast, produced and sponsored by <u>Logistics Management magazine</u>.

November 2012: Major Accident Prevention and Lessons Learned in Oil & Gas: Four Guidelines and Thirteen Best Practices for Governing Safe Supply Chains, <u>Abu Dhabi International</u> <u>Petroleum Exhibition and Conference</u> (ADIPEC).

September 2012: Optimal Supply Chain Management in Oil, Gas and Power Generation, PennWell.

August 2012: SCMR Exclusive Interview with David Jacoby on the State of the Ocean Cargo Market

June 2012: GE Oil & Gas Newsletter - "Bridging from Thermal to Renewable Power Supply Chains"

March 2012: Energy Tribune article on Tumaco Pipeline

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March 2011: Registering and Transporting Hazardous Substances, Offshore Technology

Conference

February 2011: 2011 Intermodal Freight Rate Outlook for Trades to and from North America,

Logistics Digest

December 2010: Planning Your Carbon Footprint, Bangkok Logistics Digest

November 2010: Get Off Your Diagonal, Bangkok Logistics Digest

October 2010: Petroleum Pride: Winners of BSI's 2010 Oil and Gas Supply Chain Awards,

LOGae

September 2010: 10 Tips for Choosing a Carrier or 3PL, Parcel Magazine

September 2010: Leading Supply Chain Transformations with Credibility

August 2010: Green Supply Chains by 2020

July 2010: 2010 Mid-Year Rate Outlook: Paying a Premium, Logistics Management

July 2010: The Return of PPP

May 2010: Too Small to Fail: A New Model for Regulatory Oversight

April/May 2010: The Outlook for Motors and Drives in 2010: Strategies for Success, e-Drive

April 2010: Planning for the Long Haul

March 2010: The Oil Price 'Bullwhip': Problem, Cost, Response, Oil & Gas Journal

March 2010: Supplier Development: More Than a Good Idea

February 2010: Oil Price Volatility and How to Avoid It, Energy Tribune.

February 2010: Recognizing Excellence: BSI Supply Chain Award Winners

February 2010: Using Flexible Capacity Techniques to Thrive in a Volatile Economy

January 2010: 2010 Rate Outlook Update, Logistics Management Magazine.

January 2010: W-Shaped Economy or Long Wave?

December 2009: Guide to Supply Chain Management, The Economist and Profile Books

December 2009: Supply Chain Report Card, LOG Middle East

November 2009: Contracting in Volatile Markets

October 2009: Career Advice for Young Professionals

September 2009: Capacity Concerns Could Be The Next Chemicals Supply Challenge,

Purchasing Magazine

September 2009: Your Supply Chain Costs Have Decreased by 12%

August 2009: Good, Better, Best. Supply Chain Excellence Awards

July 2009: The Bullwhip Effect in Global Trade - This is One Wild Bull

June 2009: The New Era of Post-Chinese Sourcing

June 2009: Energy Outlook, ISM Material Management News

May 2009: What's Your Middle East Strategy?

April 2009: The Ocean Market: Overcapacity Until 2012

February 2009: Send an RFO Today

January 2009: Window of Opportunity: 2009 Logistics Rate Outlook, Logistics Management (by

John Quinn with contributions by Boston Strategies International).

December 2008: Infrastructure Investment: The Supply Chain Connection, CSCMP Supply

Chain Quarterly.

December 2008: How should the global financial crisis affect your freight strategy?

November 2008: Technological Innovations in Logistics and the Extended Supply Chain

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October 2008: Intermodal Integration – Responding to Market Needs

September 2008: <u>RFID Solutions</u>
August 2008: <u>Air Express Solutions</u>

August 2008: Global Logistics – Ups and Downs, APICS e-news.

July 2008: Paperless Management Solutions

July 2008: 2008 Mid-Year Rate Outlook Update, Logistics Management Magazine.

June 2008: The Elusive Global Transportation Solution

May 2008: How Long Will the East-West Trade Imbalance Last? PARCEL Magazine.

May 2008: Can Western Manufacturers Beat the Competition? APICS Magazine.

May 2008: The Art of High-Cost Country Sourcing, Supply Chain Management Review.

May 2008: Fleet Management Solutions

April 2008: Logistics Outsourcing – It's Not About Reducing Costs

March 2008: "Shippers Compliance in Freight Transportation & Logistics" (Governance, Risk, and Compliance Handbook)

March 2008: "Carriers Compliance in Freight Transportation & Logistics" (Governance, Risk, and Compliance Handbook)

March 2008: The Shanghai Connection, World Trade Magazine.

March 2008: Visibility and the Role of Government in Container Security

February 2008: <u>RFID – The Solution to Better Baggage Handling</u>, Ground Handling International.

February 2008: Chemicals Markets Getting More Complex, Purchasing Magazine.

February 2008: Perfecting Your Supply Chain, PARCEL Magazine.

February 2008: Best Solutions in Supply Chain Management

January 2008: 2008 Logistics Rate Outlook, Logistics Management Magazine.

November 2007: Going Global – The Key is People, PARCEL Magazine.

March 2007: Variable Energy Costs and Strategic Sourcing, World Trade Magazine.

*November 28, 2007:* Intermodal, Infrastructure Investment and Financing, <u>Transport Events</u>, <u>3rd Trans Middle East Exhibition</u>, InterContinental Citystars, Cairo, Egypt.

November 13, 2007: RFID's Impact on Privacy and Security, CILIP, RFID in Libaries

Conference via live video link, QEII Conference Center, Westminster, London.

*October 31, 2007:* Management: Latest Developments in Supply Chain and Global Logistics Industry, <u>PARCEL Magazine</u>, Parcel Shipping and Distribution Forum, Hyatt Regency O'Hare, Chicago IL.

October 23, 2007: Dubai and the Changing Face of Middle East Logistics, a webinar

October 23, 2007: Energy Prices and the Supply Chain: The Outlook of Fuel Surcharges,

<u>Institute of Supply Chain Management (ISM)</u>, <u>NAPM Twin Cities Fall Conference</u>, Minneapolis Marriott Airport Hotel, Bloomington, MN.

*March 23*, 2007: The Asian Sourcing Boom: How Long Will it Last, a summary of Boston Strategies International's third annual State of Strategic Sourcing Study.

March 29, 2006: Supply Chain Benefits of Transportation Infrastructure Improvements,

Transportation Research Board (TRB), Conference on Transportation and Economic

Development (TED 2006), Little Rock AK

March 1, 2006: "Radio Frequency Identification (RFID) Comes of Age," Dallas, TX

June 2005: Measuring Sourcing Performance: What's the Mystery? Purchasing Magazine.

May 2005: Swagging the Biggest Decisions You Make, Purchasing Magazine.

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March 2005: Mitigating High Raw Material Prices, Purchasing Magazine.

February 2005: Focus on the Right Suppliers, Purchasing Magazine.

February 2005: Mega-Sourcing – Do You Have the Skills? Purchasing Magazine.

January 2005: The New Economics of Partnering, Purchasing Magazine.

July 2005. "Strategic Sourcing: Getting Maximum Points from Game Plan Variety," APICS Magazine.

2005. "Business 2010: Retailing Embracing the Challenge of Change," Economist Intelligence Unit

May 2005. "The New Face of Purchasing," Economist Intelligence Unit.

March 2005. "High-Impact Sourcing," Survey Feedback Report.

January 2005. "Strategic Sourcing Impact Study," Inside Supply Management.

August 19, 2004. "Demand to Fill Top Slots With Absolute Top Performers," C-Speak.

April 8, 2004. "Developing Skills for the Era of Mega-Sourcing," HR Executive.

March 2004. "What's Next in the Procurement Arena," APICS Performance Advantage.

# **Selected Presentations**

September 29, 2020: The Future of Supply Chain Management, IIM Ranchi, Ranchi, Jharkhand, India.

May 11, 2020: Supply Chain Security Guidelines on Provenance. North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Meeting. March 30, 2020: Achieving Breakthrough Success in the Battery Value Chain. International Battery Partnering & Investment Forum. Orlando.

December 3, 2019: Investing in Energy Innovators. Bank of Montreal – Boston Growth Conference.

October 19, 2019: Confronting Climate Change (Moderator). Lauder Institute Tri-Annual Global Reunion. New York.

June 24, 2019: Achieving Breakthrough Success in the Battery Value Chain. Advanced Automotive Battery Conference. San Diego.

June 4, 2019: Supply Chain Security Guidelines on Provenance. North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Supply Chain Working Group (SCWG). Orlando, Florida.

April 24, 2019: Economics of Offshore Wind in and Around New York. New York Energy Week Meet-Up, New York.

December 2018: Debate: Top 10 Reasons for Tariffs. APICS North Shore, Burlington MA. October 2018: "Tariffs, Trade Wars, and Your Global Supply Chain." New England Supply Chain Conference and Exhibition. Marlborough, MA.

September 2018: "Shifting Business Models in the Power Industry." Institute for Supply Management's Utility Purchasing Management Group. Scottsdale, Arizona.

June 2018: "Changing Business Models in the Power Industry." Electrify Europe conference (formerly PowerGen, by PennWell). Vienna, Austria.

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June 2018: "Navigating the Landscape of Structuring Partnership Agreements." Presentation to the 18th Annual Advanced Automotive Battery Conference, San Diego.

May 2018: "Leadership in Global Financial Markets." Panel Discussion moderated by Mauro Guillen, Director of The Lauder Institute and Dr. Felix Zandman Professor of International Management at the Wharton School, with co-panelists Laxman Narasimhan WG'93, CEO, Latin America and Europe Sub-Saharan Africa PepsiCo, Inc., and Michelle Tien WG'03, COO, Credit Suisse.

October 2017: Comparative Economics of Combined Cycle, Solar, Wind, Hydro, and Geothermal Power. University of Calgary, Haskayne School of Business, Calgary, Alberta, Canada.

October 2016: The Impact of Energy Prices on Logistics & the Global Supply Chain.

Marlborough, MA, 2016 New England Supply Chain Conference & Exhibition

May 2016: "Global Strategic Capital Project Management and Supply Chain Management in Oil and Gas Depression." Keynote Presentation and related Workshop, China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2016: "Hydrocarbons Infrastructure in Mexico." Moderator of a Panel Discussion. Second Mexico Gas Summit. San Antonio, USA. Produced by Industry Exchange LLC.

June 2015: "Negotiating Skills for Deals That Benefit All Parties." Workshop at the 3rd Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry." GFMI. Houston, USA.

May 2014: "Negotiating Production Sharing Agreements (PSAs) and Joint Operating Agreements (JOAs)". Workshop at 2nd Annual Contract Risk Management Forum for Oil & Gas. Sponsored by TBM Evolution. Berlin, Germany.

May 2014: "Navigating and Optimizing the Supplier Certification Process at National and International Oil Companies." Workshop at China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2014: "Pipeline and Oilfield Security Technologies: Global Benchmarks and State of the Art." Workshop at the Fifth Colombia Oil & Gas Conference and Exhibition. Bogota, Colombia.

May 2013: "Optimal Supply Chain Management: The Global Supply Opportunity." Speech to the China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2013. "Risk Management in Oil & Gas," Procurement and Supply Chain Management Forum for Oil & Gas, produced by TBM Evolution, Berlin, Germany.

November 2012: Major Accident Prevention and Lessons Learned in Oil & Gas: Four Guidelines and Thirteen Best Practices for Governing Safe Supply Chains, <u>Abu Dhabi International</u> <u>Petroleum Exhibition and Conference</u> (ADIPEC).

October 18, 2012. Boston, Presentation to the Society of Petroleum Engineers' New York and New England Petroleum Section, Massachusetts Institute of Technology (MIT). "Safe Supply Chain Design."

September 24-26th, 2012, London, Strategic Sourcing Workshop at 6th Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry.

January 25th, 2012, Rate Outlook Webcast, Logistics Management Magazine.

October 24, 2011. "BRIC Plus: Uncovering Economic and Supply Chain Success in the New Emerging Economies," 2011 APICS International Conference & Expo, Pittsburgh, Pennsylvania.

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September 26-28, 2011. <u>5th Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry conference</u>, Barcelona, Spain.

May 4, 2011. "Global Trade Restrictions and Related Compliance Issues Pertaining to Oil and Gas Production Chemicals," Offshore Technology Conference (OTC), Houston Texas.

January 27, 2011. "2011 Logistics Rate Outlook," Logistics Management webcast.

October 10, 2010: TransOman Transport, Shipping, and Logistics Show, Muscat, Oman.

October 5, 2010: "Protecting and Enhancing Energy Infrastructure Projects in the Middle East – Mitigating Project Risk and Safeguarding Investments, PowerGen Middle East, Doha, Qatar.

September 20, 2010: "Value-Based Pricing in the Oil and Gas Supply Chain," <u>The OFS Portal</u> LLC 8th Annual Fall Retreat, Houston, TX (USA).

June 16, 2010: "Success Stories in Supplier Development," APICS South Shore Chapter, Taunton, Massachusetts.

June 15, 2010: "Basics of Supply Chain Risk," APICS Providence Chapter, Providence, Rhode Island.

May 26, 2010: "<u>Future Management Organization for Mediterranean Ports and the Maritime Sector</u>," 8th Mediterranean Logistics and Transport Forum, Barcelona, SPAIN. Click <u>here</u> to see a copy of the presentation speech.

May 18, 2010: "Sourcing 2010 and Beyond," Round Table on Sourcing, Boston APICS Dinner Meeting, Waltham, Massachusetts. Click <a href="here">here</a> to see an excerpt of the presentation slides.

May 18, 2010: "Supply Chain Roundtable on Sourcing," APICS Chapter Events, Waltham, Massachusetts.

April 22, 2010: "Rails, Roads, Water and Air: Logistics, Inventory and Distribution," Live Television Panel Discussion, Institute for Supply Management, Phoenix AZ.

January 28-29, 2010: "<u>Economic Outlook and Strategies for Success</u>," Motor, Drives & Automation Systems 2010, Orlando, Florida. Click <u>here</u> to see an excerpt of the presentation slides.

January 28, 2010: "2010 Logistics Rate Outlook," Webcast, 2pm Eastern.

January 20, 2010: "Managing Procurement for Total Supply Chain Value," Purchasing Managers Association of Boston (PMAB), Executive Roundtable, Concord, Massachusetts.

November 24, 2009: "Supply Chain: What's it Worth?," Fifth Trans Middle East Conference and Exhibition, Bahrain. Click <a href="here">here</a> to see an excerpt of the presentation slides. Click <a href="here">here</a> to see photos from the conference.

October 27, 2009: "Supply Chain: The New Revenue Generator," The Next Generation Supply Chain, Virtual Conference sponsored by the Supply Chain Management Review.

October 18, 2009: "Realizing Supply Chain Value through Smart Freight Management," Supply Chain Management Forum, Dubai.

October 12, 2009: "Deriving Value from Supply Chain Innovation in Troubled Economic Times," The Health and Personal Care Logistics Conference, Longboat Key, Florida. Click <a href="here">here</a> to see an excerpt of the presentation slides.

October 7, 2009: "Winning Supply Chain Strategies and Financial Benchmarks," APICS New York City Chapter, New York City.

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October 7, 2009: "The New Global Supply Chain," Council of Supply Chain Management Professionals' Manhattan Roundtable, New York City. Click <a href="here">here</a> to see an excerpt of the presentation slides.

April 4-6, 2009: Keynote Presentation, Supply Chain Management: Realizing the Potential, Third Annual Supply Chain Management Symposium, Hotel Meridien, Khobar, Saudi Arabia. April 4-6, 2009: Eliminating the Bullwhip Effect by Synchronizing Supply Chains, Third Annual Supply Chain Management Symposium, Hotel Meridien, Khobar, Saudi Arabia. Click here to see a photo from the symposium.

January 29, 2009: Panel of Experts Webcast, 2009 Rate Outlook, Logistics Management Magazine.

January 20, 2009: International Sourcing and Cross-Border Logistics, <u>APICS</u>, Boston, MA November 23-25, 2008: Supply Chain — From Concept to Cash, <u>Transport Events</u>, <u>4th Trans Middle East</u>, Dubai, UAE. <u>Click here to see photos from the conference</u>.

October 6, 2008: Global Logistics — Hot Spots and Major Developments, New England Supply Chain Conference & Exhibition 2008, Marlboro, MA.

September 24-26, 2008: Supply Chain Organization Development, Southwest Supply Management Conference, Institute for Supply Management (ISM), Dallas, TX.

September 24-26, 2008: Keynote Presentation, Strategically Sourcing Transportation:

Competition vs. Cooperation, Southwest Supply Management Conference, <u>Institute for Supply Management (ISM)</u>, Dallas, TX.

September 17-18, 2008: Ports Can Increase Margins Through End-to-End Supply Chain Brilliance, PorTech Asia 2008, Tianjin, China.

September 14-16, 2008: Global Logistics: The Next Generation, 2008 APICS International Conference and Expo, Kansas City, Missouri.

September 9, 2008: <u>Business Forecasting and Planning Excellence Conference</u>, Las Vegas, Nevada. (Chairperson)

July 22, 2008: 2008 Mid-Year Rate Outlook—Uncertainty Persists, 2008 Mid-Year Rate Outlook Webcast, Logistics Management Magazine.

*June 5-6, 2008:* Global Economic Trends and Development in Containerised Trade Growth, Transport Events, 6<sup>th</sup> ASEAN Ports and Shipping 2008, Ho Chi Minh City, Vietnam.

*March 25, 2008:* RFID in Ground Handling, Transport IQ (<u>IQPC</u>), <u>Ground Handling Excellence in Passenger Services Conference</u>, Kuala Lumpur, Malaysia.

March 20, 2008: Supply Chain Strategy, a webinar.

March 6, 2008: Logistics In Gioia Tauro, a webinar.

March 6, 2008: Supply Chain Organization Development, a webinar.

*March* 6, 2008: RFID and Security, <u>International Air Transport Association (IATA)</u>, <u>World Cargo Symposium</u>, Rome, Italy.

February 21, 2008: Logistics In Seattle, a webinar.

*January 30, 2008*: 2008 Rate OutlookUncertainty Abounds, <u>2008 Logistics Rate Outlook Webcast</u>, <u>Logistics Management Magazine</u>.

January 30, 2008: How Will Western Manufacturers Survive?, a webinar.

January 8, 2008: Logistics in New York, a webinar.

December 13, 2007: Logistics in Shanghai – Along the Yangtse, a webinar.

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November 28, 2007: Intermodal, Infrastructure Investment and Financing, Transport Events, 3rd Trans Middle East Exhibition, InterContinental Citystars, Cairo, Egypt.

November 26, 2007: Logistics in Cairo-Through the Suez Canal, a webinar.

November 19, 2007: Supply Risk Management, a webinar.

November 13, 2007: RFID's Impact on Privacy and Security, CILIP, RFID in Libraries

Conference via live video link, QEII Conference Center, Westminster, London.

October 31, 2007: Management: Latest Developments in Supply Chain and Global Logistics Industry, PARCEL Magazine, Parcel Shipping and Distribution Forum, Hyatt Regency O'Hare, Chicago IL.

October 23, 2007: Dubai and the Changing Face of Middle East Logistics, a webinar

October 23, 2007: Energy Prices and the Supply Chain: The Outlook of Fuel Surcharges,

Institute of Supply Chain Management (ISM), NAPM Twin Cities Fall Conference, Minneapolis Marriott Airport Hotel, Bloomington, MN.

September 27, 2007: Multimodal Synergy – Integrated Capability in Logistics and Transportation, Transport Events, 4th Thai Ports and Shipping Exhibition and Conference,

Imperial Queen's Park Hotel, Bangkok, Thailand.

September 27, 2007: Energy Prices and the Supply Chain: Charting a New Course, IPC, Midwest Manufacturing Conference and Exhibition, Donald E. Stevens Convetion Center, Rosemont, IL.

September 18, 2007: Is there ROI in RFID? a webinar

August 21, 2007: Benchmarking Your Supply Chain Savings, a webinar

August 7, 2007: Energy Prices Reshaping the Supply Chain, a webinar

July 23, 2007: Budgeting for Volatility, a webinar

June 4, 2007: Sourcing from China, Journal of Commerce, 3<sup>rd</sup> Annual China Trade & Logistics

Conference, Savannah International Trade and Convention Center, Savannah GA.

April 25-27, 2007: Budgeting and Forecasting in a Highly Volatile Environment, Institute of Business Forecasting and Planning (IBF), Demand Planning and Forecasting: Best Practices Conference 2007, Loews New Orleans Hotel, New Orleans LA.

March 23, 2007: The Asian Sourcing Boom: How Long Will it Last, a summary of Boston Strategies International's third annual State of Strategic Sourcing Study.

March 21, 2007: Low-Cost Country Sourcing: Sweeping Up, National Association of

Purchasing Management Southern New Hampshire Chapter, Concord NH

March 5, 2007: Courting the Consumer: Creating Dynamic Brands in Retail and Consumer Goods, Vendor Compliance Federation Conference, Marco Island FL

March 1, 2007: The Impact of Low-Cost Country Sourcing on the Chemicals Supply Chain, Institute of Supply Chain Management (ISM) Conference, World Gold Village, Renaissance Hotel, St. Augustine FL.

February 16, 2007: Benchmarking Your Supply Chain Savings, a webinar

January 31, 2007: Logistics Outlook 2007 Webcast, Logistics Management Magazine.

January 23, 2007: Energy Prices Reshaping the Supply Chain: Charting a New Course?, Joint meeting of APICS Providence and Purchasing Managers' Association of Rhode Island (PMARI), Warwick, RI.

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*January 11, 2007:* Global Trade and Technology: The Crossroads, <u>Beverly Chamber of Commerce</u>, Beverly MA

January 8, 2007: Data Explosion: Redefining Metrics, <u>Purchasing Managers Association of Boston</u>, Lexington MA

*November 27, 2006:* RFID: Revolutionizing Baggage Handling, <u>Ground Handling International</u> (GHI), 8<sup>th</sup> Annual Ground Handling International Conference, Monaco

*November 16, 2006:* Supply Market Intelligence: What is Your Supply Market IQ? <u>APICS</u> Fairfield County, Fairfield CT

*November 14, 2006:* Supply Market Intelligence: What You Don't Know Can Hurt You, Resources Global Professionals, Westford MA

October 25, 2006: RFID: Mining Mega-Data for Enhanced Forecast Accuracy, <u>Institute of Business Forecasting and Planning (IBF)</u>, <u>Demand Planning and Forecasting Conference 2006</u>, Orlando FL

October 18, 2006: Taking Smarter Risks by Forecasting Complex Supply Markets, APICS Princeton-Trenton-Monmouth-Ocean Chapter, Columbus NJ

October 12, 2006: Minimizing Risk by Forecasting Supply Markets, APICS Monadnock Chapter, Keene NH

October 2, 2006: Is there ROI in RFID?, Northeast Supply Chain Conference & Exhibition 2006, Marlborough MA

September 26, 2006: The Asian Sourcing Boom: How Long Will it Last?, <u>Distribution Business</u> Management Association Annual Conference, Las Vegas NV

September 14, 2006: What is Your Supply Market IQ?, Council of Supply Chain Management Professionals (CSCMP) NYCONN Roundtable, Dobbs Ferry NY

September 12, 2006: Supply Market Intelligence: What You Don't Know Can Hurt You, APICS North Shore, Woburn MA

*June 12*, 2006: Building a Secure Supply Chain with RFID, <u>Vendor Compliance Federation</u> Supply Chain Conference, Teaneck NJ.

May 17, 2006: "The Logistics of Global Outsourcing," APICS New Haven.

May 1, 2006: "The New Age of Purchasing," <u>Purchasing Managers Association of Boston</u> Top Management Night, Boston MA.

April 24, 2006: "Managing Supply Risk," client presentation in Dharan, Saudi Arabia.

March 29, 2006: Supply Chain Benefits of Transportation Infrastructure Improvements,

<u>Transportation Research Board (TRB), Conference on Transportation and Economic Development (TED 2006)</u>, Little Rock AK

March 1, 2006: "Radio Frequency Identification (RFID) Comes of Age," Dallas, TX February 28, 2006: "Creating Dynamic Brands in Retail/Consumer Goods," San Francisco CA January 19, 2006: "Designing Sourcing and Logistics for Flexibility and Innovation," Massachusetts Biotechnology Council, Boston Logan Airport

## References

# **Selection of endorsements from LinkedIn:**

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- "David Jacoby is one of the most knowledgeable supply chain professionals I have ever met! He had an amazing depth, in multiple facets of materials management, and had consistently contributed to the profession in many ways. It is always a pleasure dealing with Dave one of the best in the business!"
  - o Kenneth B. Glasser, CPIM, C.P.M., Global Sourcing Manager, Axcelis
- "David Jacoby is a brilliant consultant with outstanding analytical capabilities applied to a long term vision of what matters. I've known him for more than 20 years and have seen how he shaped his company to become what it is today, a remarkable company that delivers differentiating value to its customers. I strongly recommend him and his company."
  - o Christophe Poittevin, Software Sales Manager, IBM Software Group
- "David and his team at Boston Strategies did an outstanding job on our supply chain strategy project at NYCHA. Their research and recommendations were thorough and data-driven. David is an expert who never stops learning and a consummate professional who focuses on providing value for his clients and his profession. [He delivers] great results, expertise, and high integrity."
  - o Gary Smith CPIM, CSCP, Director of Supply Chain Operations, New York City Housing Authority
- "As a consultant to multinational companies on supply chain strategy and performance for over 20 years, David has the rare ability and creativity to make the complicated simple."
  - o St. Claire Gerald, CSCP, Former Director Supply Chain Management, Foot Locker
- "David is a supply chain management expert who combines top notch analytical skills with over two decades of global experience. His counsel has been invaluable and I highly recommend him."
  - o Charles Gamble, Senior Vice President-Client Services, Tangoe
- "David has the ability to analyze complex problems and present solutions in a clear, concise, practical manner. His primary research is excellent and he has consistently added a welcomed level of sophistication to the field of supply chain management. I am currently using his new book in university level courses and it has been well received by my students."
  - o Richard Weissman, Assistant Professor, Endicott College
- "I highly recommend David for his expertise in strategy development involving global markets. His firm can work across such a diverse array of industries and deliver an insight based on incredible research capabilities and current knowledge of market conditions."
  - o Jeffrey Kearns, Finance and Systems Manager at General Dynamics
- "David is a top-level consultant with an outstanding capacity of synthesizing the complexity of the SCM body of knowledge while at the same time offering original perspectives. He has the right mix of academic background and hands-on experience to get the job done!"
  - Massimo Marchi, MBA, CSCP, CLSSS, Director of Supply Chain Planning and IT, Beretta

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- "David is a highly respected thought and practice leader in Supply chain management. He has consulted for over 20 years in Procurement, Transportation, Logistics, Manufacturing, Economics, and International Trade; and he is excellent at putting this acquired knowledge and functional experience to work solving complicated business issues. Having seen his work, heard his presentations, and read his white papers, I high recommend him and Boston Strategies in solving your business challenges and or in developing your Supply Chain Strategy."
  - o Greg Cornelius, CSCP, Director, Supply Chain Management, Haemonetics

Book Reviews of "Guide to Supply Chain Management"

# AS OF MARCH 1, 2012

- "I never really understood what supply chain management was until I read this book. It seemed to mean something different depending on who I was talking to. Now I get it."
- "I'm a university professor, and I am really impressed at how thorough the book is. From the preface to the glossary and the end notes, everything is well-documented, which makes the arguments and Jacoby's framework for supply chain management trustworthy and believable. Overall, the book is a credit to the Economist brand."
- "As a supply chain trainer and author, I am always pleased to read books that add to my knowledge and this book certainly made me stop and reflect many times = great! Let down slightly by the publishers small reproduction of the many charts and tables; overall however, this is a very good piece of work!"
- "The work sorts through some of the mythos about supply chain management and focuses on the core activities that add measurable value."
- "An excellent guide and, a must read not only for C-level managers but also for inclusion in curricula in business studies... brilliant in explaining the myths and realities of the various elements that are critical components of the supply chain."
- "If you are a novice to supply chain and often confused by conflicting definitions on what SCM is and is not read this book. If you are a supply chain practitioner and want some clear markers on designing a comprehensive supply chain strategy, read this book. David Jacoby's experience of over 20 years of strategic consulting on supply chain initiatives clearly comes through in this well-researched piece. The book very quickly jumps into the 4 key supply chain strategies cost rationalization, demand-supply synchronization, customization and innovation that organizations can pursue. And highlights early on the often forgotten point that while we can classify any function within an organizational silo, activities within them cannot be similarly silo-ed if we want to derive value. For instance, we often lump DC-Network design and an initiative such as cross-docking under the

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warehousing function. But how many of us look at the former activity through the lens of cost rationalization, and the latter as an enabler of synchronization? Insights, such as this, abound. The book frames the final few chapters with details on the organization structure, information systems framework and KPIs that must supplement each of these strategies. And that is when we truly comprehend the completeness of supply chain management. My only grouse is that the book went into too much of theory and detail toward the end. Maybe it was intentional, given the wide range of audience it aims to cater to. But if you can stifle some of those yawns and plough on, you will be enriched with a wealth of knowledge on how you must design, strategize, implement, measure and enhance your supply chain."

- "As a supply chain professional I found this book to be immensely helpful. It reduces important supply chain principles to quantifiable and applicable guidelines. A good read and a must for anyone looking to leverage value from your supply chain "
- "This is a great book that provides a concise yet thorough overview of supply chain management. It is educational and actionable filled with well-supported arguments and excellent, illustrative anecdotes. The book is not just for supply chain professionals. It is for any business person that wants to help take their company to the next level. Having read it and written notes in the margins, I will keep it nearby as a reference guide."
- "This book is very informative for anyone wanting to know more about supply chain management. The examples cited, as well as the charts are extremely helpful. I believe anyone can benefit from reading this book whether or not they have direct responsibility for supply chain activities."
- "This book describes very well the ins and outs of what the Supply Chain concept encompasses. It gives an excellent global understanding and is very rich of examples from real life situations. I warmly recommend its reading.
- "An essential tool for C-level management and their senior managers. It is clear, balanced in its objectivity and useful for achieving rapid results."
- "A strategic breath of fresh air for executives who are tired of tactical how-to books on supply chain management. It provides simple, logical guidance on how companies should think about the people, processes and infrastructure they put in place to enable the supply chains that will deliver their future.
- "A pragmatic approach for turning supply chain into a strategic differentiator, along with a treasure chest of examples showing how successful companies have done it."
- "A real-world look at how leading companies are putting supply chain management into practice for proven competitive advantage. This guide definitely belongs in your business library."

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## In-Depth Book Review of 'Guide to SCM'

David Jacoby. *Guide to Supply Chain Management: How Getting it Right Boosts Corporate Performance (The Economist)*. Bloomberg Press, 731 Lexington Avenue, New York, NY 10022. Sept 9, 2009. 262 pages. ISBN: 978-1-57660-345-1. US \$29.95.

First impressions can be very misleading. At a quick glance, *The Guide to Supply Chain Management* appears to be another book geared toward grabbing the eye of the CEO. But don't be deceived; this little book packs a significant punch! There is meat in this guide, presented in a straightforward organized way as an excellent reference for CEO and supply chain student as well. It is intended to get to the core of SCM by being clear, objective, relevant, and effective and includes numerous real world examples. In great measure, this book succeeds in solidly delivering on those goals.

The author matches years of experience with anecdotes, examples, and research derived from an impressive list of corporations, professional organizations, and academics. The book starts with a short history of SCM, highlighting the key problem of balancing supply and demand. Along the way, the author examines cost, security, legislative compliance, consumer safety, and environmental protection issues in making supply chain management the "hot topic" that it is today.

The focus of this guide though is on supply chain strategy. Supply chain strategy is an evolving and dynamic activity to which specific SCM tools, techniques, and metrics must be aligned. Even the organizational positioning of the supply chain function within the firm is critical to implementing a successful strategy. There is a clear distinction between supply chain management and supply chain strategy. Supply chain management provides customer benefit through increased efficiency, reliability, flexibility, and innovation. Supply chain strategy is all about putting these principles into action. Supply chain strategy flows from the business strategy and for successful firms, requires careful consideration.

This guide integrates that strategy through a framework containing four individual sequenced strategies – rationalisation, synchronisation, customisation, and innovation.

Rationalisation is the first strategy explored, focusing on low cost competition. Among the key elements discussed are strategic sourcing and outsourcing, lean manufacturing with all its familiar tenets, and product standardization and simplification. Consignment practices, vendor managed inventory, transportation mode selection, cross-docking, by-passing inventory tiers and equipment pooling are among the many other rationalisation techniques described in the text.

The follow-on strategy is synchronisation – competing on reliability of service. Techniques such as constraint management, just-in-time inventory, the Perfect Order, Make-to-Order practices, Sales and Operations planning, and risk management are among the techniques described in sychronisation, and in most cases, illustrated with real world examples.

Flowing from synchronisation is the customisation strategy or competing on customer intimacy. The guide highlights techniques such as control of the customer relationship, value analysis, and customer knowledge management and profitability management. Customisation places an

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emphasis on personal interactions and the goal of closely linking supply chain partners over time through value-adding services. Again, the author relies heavily on real world anecdotes and examples to illustrate these concepts.

The final strategy – which follows from customisation – is the innovation strategy or competing through a rapidly changing supply chain. Continuous feedback, product development, prototyping and product life-cycle management are among the practices described for successfully competing in an innovative environment. Firms that compete with innovative supply chains are identifiable not only by top tier positioning with the firm, but also by the amount of synergy and integration built into the organization.

The guide follows the strategy framework discussion with a chapter on organizing, training, and developing the staff to support each individual strategy. One of the highlights here is the linking of each supply chain strategy to the placement of SCM within the organizational structure of the firm. As strategy moves from rationalisation to innovation, the seat of the supply chain function moves closer to the top of the organization with the focus becoming more horizontal than vertical. Typical organization charts included here help to emphasize these points.

Of course, no strategy is workable without a set of enablers such as information technologies and metrics systems and the guide illustrates these using an enterprise resource planning system as the starting point. The book offers a selection of top-level corporate metrics as well as specific metrics linked to each strategy within the integrated framework. The guide concludes with an insightful discussion of the challenges for SCM in the future.

This guide covers a lot of territory, but does so in a very clear and objective manner. If the reader is looking for an in-depth discussion specific SCM techniques or strategic issues, this is not the text – there are other works that can provide that detail. But for corporate leadership or the SCM student looking to link the basics to a strategic framework, this guide in an excellent resource and would be a great addition to the practitioner's library. Reviewed by

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# Opinions on the Testimony of Bradley S. Jacobs as it Relates to

**XPO's Activities and Responsibilities** 

in the Case of

Great Southland Limited v.
Landash Corporation, et al.

**CONFIDENTIAL** 

By David Steven Jacoby June 21st, 2021

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# 1 Introduction

# 1.1 Executive Summary

I was asked to offer an analysis and an opinion, based on my background and experience in supply chain management, as to whether the Brad Jacobs deposition added any new insight into whether and to what degree XPO may have been responsible for the actions of Afif Baltagi, in his capacity as XPO's Branch Manager of XPO's Houston, Texas facility, in the Ponzi scheme orchestrated by Jason Adkins, beyond the points I already raised in my report *Opinions on XPO's Activities and Responsibilities in the Case of Great Southland Limited v. Landash Corporation, et al.* from June 14, 2021.

To do this, I reviewed the Jacobs deposition and exhibits.

Based on my review and my experience, it is my opinion that the June 14<sup>th</sup> testimony of Bradley Jacobs, Chairman and CEO of XPO, reinforces four aspects of XPO cited in the report I submitted on that same day.

- The failure of the office of the CEO to adhere to basic risk management principle was responsible for XPO failing to notice the GSL fraud. ("apparent lack of evaluation of legal and financial safeguards")
- A lack of supervision in the CEO's office allowed egregious and explicit problems such as the lawsuit letter from Star Funding to go unmanaged. ("lack of audits or surveillance systems)
- The chain of authority between Jacobs and Baltagi was extraordinarily unclear, with the result that nobody could be held directly accountable. ("confusing organizational relationships")
- XPO shielded its management from consequences of its actions by keeping the CEO uninformed of problems, especially legal ones, a practice which resulted in XPO's failure to handle the GSL situation in a timely and responsible way. ("collective abrogation of accountability")

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Figure 1: Relevance of the Jacobs Testimony to Observations in My Report



Source: My June 14 report (highlights added)

# 1.2 My Professional Background

I have been consulting for 32 years in supply chain management, operations strategy and performance improvement, primarily in the transportation, logistics, energy, and automotive sectors. Much of my work has consisted of benchmarking and industry best practices studies. My clients have included transport and logistics companies such as UPS, FedEx, Iron Mountain, CSX, Jacksonville Port Authority, and Amtrak, as well as shippers including A.T. Cross, Mercedes-Benz, and General Motors. I've also consulted to information systems providers such as SAP, and government agencies such as the U.S. Department of Transportation and the New York City Housing Authority.

Before founding Boston Strategies International, I served as a consultant in the logistics, transportation, procurement, operations management, and supply chain management practices of management consulting firms including Kearney, Temple Barker & Sloane (now Oliver Wyman) and a boutique firm called Carlisle, Fagan, Gaskins & Wise. I also taught Operations Management at Boston University's graduate school of business.

I wrote *Guide to Supply Chain Management* (The Economist, 2009) and other books on supply chain management, logistics and trade. I also wrote both the Shippers Compliance in Freight Transportation & Logistics and the Carrier Compliance in Freight Transportation & Logistics chapters for the Governance, Risk, and Compliance Handbook (Tarantino, 2006), and have contributed several hundred speeches, articles, white papers, and webcasts for publications such as Supply Chain Management Review, Supply Chain Quarterly, and the Transportation Research Board.

My supply chain certifications include: Certified Fellow in Production and Inventory Management (CFPIM), Certified Supply Chain Professional (CSCP), Certified in Integrated

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Resource Management (CIRM), Certified in Purchasing Management (Lifetime C.P.M.), and Certified in Transportation and Logistics (C.T.L.), among others.

# 1.3 Retention for This Matter

I was retained by Carlile Patchen & Murphy LLP in March 2021. I am compensated at a rate of \$550 per hour. The fees I receive are not contingent on the outcome of this litigation. To my knowledge there is no conflict of interest between my work on this case and any other work I am doing or have ever done.

# 1.4 Materials Reviewed

The electronic files conveyed to me regarding this case were as follows:

- 302444 Jacobs Full-sized with Hyperlinked Exhibits.pdf
- 302444 Exhibit 001.pdf
- 302444 Exhibit 002.pdf
- 302444 Exhibit 003.pdf
- 302444 Exhibit 004.pdf
- 302444 Exhibit 005.pdf

# 1.5 Citation Formats and Report Updation

For clarity this report cites references to deposition and other discovery material where such references may be useful. For brevity I inserted these citations parenthetically using the format "(Deponent's Name or source file name, page number of the pdf source file)," for example (Komsky, 32). Unless these references apply to a specific sentence or phrase, I placed them at the end of paragraphs for easier readability. If multiple citations apply to the paragraph I used a semicolon to separate them, for example (Musetti, 11; Hodgson, 117). External references are cited as footnotes.

I reserve the right to supplement this report should new information become available to me.

David Steven Jacoby

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# 2 Additional Observations

Four management characteristics acted in concert to enable the fraud, as illustrated in the diagram below. Confusing organizational relationships led to an abrogation of accountability. The abrogation of accountability, together with the lack of audits, surveillance systems, and safeguards, enabled Baltagi to facilitate Adkins' fraud against GSL.

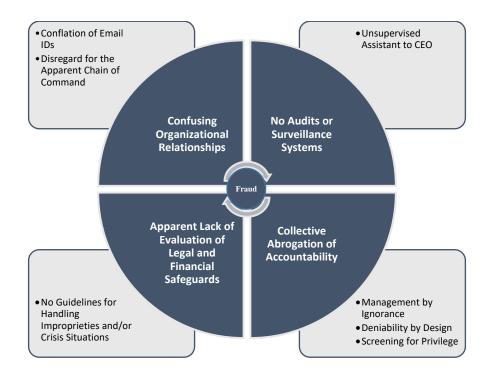


Figure 2: Fraud Risk Increased by Inactions of Executive Office

The additional points are summarized below, in the following order:

- Failure to Adhere to Basic Risk Management Procedures
- Lack of Supervision
- Unclear Chain of Authority
- Deflection and Shielding from Problems

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# 2.1 Failure to Adhere to Basic Risk Management Procedures

Brad Jacobs' testimony eliminates doubt about the point in my report that XPO lacked evaluation of legal and financial safeguards. In my report I called it an "apparent lack of legal and financial safeguards." However, in this case the failure of the office of the CEO to adhere to basic risk management principles, practices, and procedures seems directly responsible for XPO failing to notice the GSL fraud.

According to his testimony, Jacobs set no thresholds, parameters, or decision rules for when Friedman should notify him about anything, up to and including crisis situations. Based on what he says in the deposition, Catherine Friedman effectively ran XPO by representing herself as him without limitation. (Jacobs, 41)

Large transportation and logistics companies are typically run by strict Standard Operating Procedures. FedEx and UPS are built on military-style cultures. It seems self-evident to me that a lack of procedural discipline would lead to system failures.

# 2.2 Lack of Supervision

Jacobs' deposition reinforces what my report called "**no audits or surveillance systems**." Jacobs says that he never thought of establishing guidelines for which communication his Assistant should share with him (Jacobs, 21), and doesn't know why there is no policy (Jacobs, 42). This lack of basic supervision in the CEO's office allowed egregious and explicit problems such as the lawsuit letter from Star Funding to go unmanaged.

# 2.3 Unclear Chain of Authority

While my earlier report observed that the reporting relationship between Baltagi and Shook/Muzi/Oliver/Jorgensen was unclear ("confusing organizational relationships"), Jacobs' deposition amplifies this lack of clarity and demonstrates that the chain of authority between Jacobs and Baltagi was so unclear that nobody was directly accountable for anything.

Conflation of Email IDs. While it is already confusing that the Assistant to the CEO sent emails under his name (Brad Jacobs) as well as under her own name (Catherine Friedman), Jacobs' testimony that he set no guidelines around when she should respond as Brad Jacobs and when she should respond as Catherine Friedman adds further confusion to the chain of command between Jacobs and Baltagi, not only between Baltagi and his supervisors but at the top, even between Jacobs and Friedman. (Jacobs, 19) The fact that Jacobs never required Friedman to get his approval on how to respond to emails, oral or otherwise, made it unclear which communications Jacobs may have authorized and which he may not have authorized.

To the extent that Friedman processed all or nearly all of the operational communications coming into the CEO's office, and employees knew this, Shook/Muzi/Jorgensen/Oliver likely

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assumed that the emails about Star Funding did *not* come directly from Jacobs himself, but were rather just an administrative "FYI" from his Assistant. It now makes sense why Baltagi's supervisors were so inattentive about follow-through to the GSL crisis: they probably considered the emails from the Jacobs email address, which they knew were actually coming from Catherine Friedman, as administrative annoyances rather than high-priority messages with potential consequences for their jobs and careers.

Disregard for the Apparent Chain of Command. In my view it is strange that Catherine Friedman (or Brad Jacobs, we don't know which) engaged in email dialogue about operational issues directly with business unit heads without copying the Chief Operating Officer. Although we don't have an organization chart for XPO, employees with titles such as Branch Manager and VP Operations, would likely report directly or indirectly to the Chief Operations Officer. And yet, Friedman did not copy Troy Cooper, who according to his LinkedIn profile was XPO's Chief Operations Officer in 2015 and 2016, on any of the emails.

As clear workflows and reporting relationships are prerequisites for effective Separation of Duties (sometimes called Segregation of Duties, or SoD), a risk management principle that underpins many auditing and fraud management frameworks such as ISO 31000 and Sarbanes-Oxley, it could be said that XPO's ambiguous roles and disregard for chain of command made it impossible for XPO to responsibly manage risk.

# 2.4 Deflection and Shielding from Problems

Management by Ignorance. The CEO's office gatekeeping seems designed to keep problems, especially those involving actual or potential legal liability, from ever coming to the CEO's attention. Jacobs described Friedman as his "general gatekeeper," which shows that even at the CEO level, XPO was not interested in rectifying operational problems or customer complaints. It chose instead to deal with the aftermath of problems through the courts. This enabled the C Suite to maintain its focus on mergers, acquisitions, and financing future growth. However, on the flip side it led to a lack of accountability, as described in the previous report as a "collective abrogation of accountability."

*Deniability by Design*. Moreover, because of the conflation of Jacobs' and Friedman's email IDs referenced above, Jacobs could always claim additional deniability in one of three forms – "I see that but I would not have approved it" or "I did not know about that" or "I knew about that but I did not approve it." (Jacobs, 25)

Screening for Privilege. My report noted that the Assistant to the CEO forwarded all legal correspondence directly to the Legal department with no communications to the CEO. Jacobs' testimony affirms that this was by design. The CEO relied on XPO's *lawyers* to brief him, not XPO operations staff or his assistant. (Jacobs, 59) Expecting to battle it out in court rather than address the issue internally, Legal could then assert privilege, as noted in my report, over the vast majority of communications related to disputed matters. From this it might appear that XPO had no interest in ever addressing the root cause of the fraud against GSL or preventing more of it through conventional measures such as process improvement, reprimands and firings.

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# 3 Appendix: Summary Biography of David Steven Jacoby

David Steven Jacoby, MBA, CFPIM, CSCP, CIRM, CPM, CTL

David Jacoby has been consulting for over 30 years in supply chain management, operations strategy and performance improvement. He wrote Guide to Supply Chain Management (The Economist, 2009) and multiple other supply chain books for major publishers, and has contributed over 300 speeches, articles and webcasts to publications including the Supply Chain Management Review and Supply Chain Quarterly.

His relevant experience includes the following projects and roles:

- Evaluated international growth strategies, including freight forwarding truckload, and less-then-truckload carrier segments, and whether or not to enter new LTL markets in Europe.
- Deployed routing technology and standardized work methods & standards, storage & shuttle configurations, and organization and compensation structures for a less than truckload service provider.
- Developed valuation models and scenarios during due-diligence for a multimodal (rail/ocean) merger.
- Led a Benchmarking Center of Excellence for A.T. Kearney. Conducted dozens of benchmarking projects for equipment, parts and component distribution in automotive, medical, electronics, and other diverse industries.
- Overhauled logistics at a retailer with regional operations, in a two-year project that graduated from a pilot program through an implementation program.
- Led several process improvement teams during a multi-year effort at a multinational vehicle manufacturer, with sequential consulting projects in Europe, Latin America, and the US.
- Established a growth strategy and initiated partnership meetings between a consumer products company and international 3PLs.

He has taught graduate school Operations Management at Boston University and consulted at several global consultancies, including Kearney, Norbridge, and Temple, Barker & Sloane.

He holds an MBA from the Wharton School, a Masters in International Business from the University of Pennsylvania's Lauder Institute and a Bachelor of Science in Finance and Economics from the University of Pennsylvania, where he did coursework at the Université de Compiègne (France) and Delft Institute of Technology (Netherlands). He is also a Certified Fellow in Production and Inventory Management (CFPIM), Certified in Supply Chain Management (CSCP), Certified in Integrated Resource Management (CIRM), Certified in Purchasing Management (Lifetime C.P.M.), and Certified in Transportation and Logistics (CTL). At the International Supply Chain Education Alliance (ISCEA), he is a member of its Ptak Prize Selection Committee.

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# 4 Appendix: Resume of David Jacoby

# Work Experience

<u>Boston Strategies International (BSI), Inc.</u>, President, 1998 – present, a consultancy that provides digital solutions and outsourced services to make supply chains more innovative, agile, resilient, secure, sustainable, and customizable. Built a sales and project delivery network encompassing international partners in a dozen countries, plus nearly two dozen channel partners and technical specialists. Project examples include:

- Developed a methodology to help the US Department of Transportation account for supply chain benefits of large-scale infrastructure projects. By using the 'supply chain benefits' method, the US will be on a path to approve 156% more capex for large-scale projects over the next 23 years.
- Evaluated international growth strategies for one of the world's largest integrated transportation carriers, specifically the decisions whether to enter new freight and LTL markets.
- Led a team that redesigned the logistics network and the procedures for distribution and warehousing of maintenance and repair parts to 260 sites belonging to the New York City Housing Authority.
- Led a team that saved 13% on a \$45 billion capital project for a European company by designing a master supply chain strategy and procurement plan.
- Economist, Contributing Editor (while consulting at BSI). Researched, conducted surveys, and wrote 11 custom 'thought leadership' papers on supply chain related topics for SAP, Microsoft, Cisco, and other clients. Presented results at international conferences. Titles included, for example: The New Face of Purchasing; RFID Comes of Age; Chinese Third-Party Logistics Market Analysis and Forecast; and Unleashing the Power of Customer Data.
- Boston University, Lecturer, Graduate School of Management, Department of Operations Management (while consulting at BSI). Taught 35 graduate students per semester using a combination of case studies, lectures, and exercises. Topics included, for example: constraints management, statistical process control, quality management and Six Sigma, inventory and just-in-time, mass customization, service operations management, and supply chain strategy.

Norbridge Inc., Principal, Transport & Logistics, 1996 – 1998 (Concord, MA). Helped global rail and intermodal carriers, auto manufacturers, distributors and logistics service providers improve operations (e.g., purchasing, manufacturing, transportation, and maintenance) through benchmarking, demand forecasting, process redesign, planning and scheduling, materials management, and equipment/infrastructure planning. Clients included companies such as FedEx, Chrysler, and CSX. Promoted from Senior Associate.

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- Supported operational integration with competitive analyses and capacity strategies for the intermodal, merchandise, and bulk businesses during four phases of a \$10 billion rail merger.
- Managed numerous multi-party benchmarking and best practices studies, including two that involved an annual parts logistics conference.

A.T. Kearney Inc., Manager, Procurement Logistics and Supply Chain, 1989 – 1996 (based in New York, Chicago [two years], Paris [two years], Brazil [two years] and Atlanta, with project work in Eastern Europe and Asia. Served clients such as BASF, New Zealand Rail, France Telecom, Kowloon-Canton Railway, GM, Kraft, and Monoprix. Managed engagements in strategic sourcing, transportation, logistics/supply chain optimization, maintenance management, outsourcing and business transformation (reengineering), M&A, privatization, competitive intelligence, and marketing strategy. Led a Benchmarking Center of Excellence. Promoted from Associate. Featured projects include:

- Designed and implemented a major global sourcing program for vehicle makers in Brazil that saved 20% through a multi-year engagement that was conducted entirely in Portuguese. Also re-engineered the order fulfillment process of CKD (completely-knocked-down) trucks, reducing lead time by 30% and cost by 35% for the activities in scope.
- Assessed the business strategy, base case, forecast scenarios, and valued an Australasian railway, paving the way for its \$328 million sale.
- Evaluated the financial viability of five multi-billion dollar capital projects for a Chinese freight logistics and passenger rail and ferry company, resulting in the decision to build a container train service, a harbor tunnel, and a high-volume strategically important switching yard.
- Built a case that helped a Canadian railroad successfully secure government approvals
  to build a cross-border double-stack freight rail tunnel by demonstrating that the
  construction and the ongoing operations would generate hundreds of jobs, and
  comparing that to a 'do-nothing' scenario, in which traffic flows and terminal utilization
  would create congestion and traffic delays.
- Co-managed a Benchmarking Center of Excellence that provided the basis for consulting projects that reduced costs and improved performance of hundreds of European companies in logistics, finance, manufacturing and maintenance.
- Analyzed transportation rates and identified savings opportunities for chemicals, forest products, and food products shippers. Prepared workshops on negotiating with suppliers.
- Implemented a redesigned store logistics process, improving cash-flow and decreasing stockouts and markdowns for a French retail chain. Conducted a series of detailed pilot programs.

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World Bank, Junior Economist (Consultant), 1985 (Tunis). Analyzed domestic resource cost of seven agricultural commodities in (potatoes, oranges, olives, dates, hard wheat, soft wheat, and barley). Follow-on mission based on a successful USAID project in the same ministry. The work, which was conducted entirely in French, presaged a major wave of free-market reforms.

Mercer Management Consulting Inc., Research Associate, International Trade Group, Research Associate, 1985 – 1987 (Lexington, MA, currently Oliver Wyman). Developed business and investment strategies, economic analyses, and decision support tools for maritime clients such as APL and Sea-Land, and a large number of ports. Also participated in World Bankfunded projects for the governments of Benin and Burundi.

- Architected and built key elements of a computer-based World Trade Forecasting Service that was subsequently sold to an econometric forecasting firm.
- Developed valuation models and scenarios during due-diligence for a ground-breaking multimodal merger.

### Education

- MBA, Wharton School, University of Pennsylvania, Strategic Planning and Marketing, 1989.
- Master of Arts, <u>The Lauder Institute</u> of International Studies, University of Pennsylvania, 1989.
- Bachelor of Science (Economics), <u>University of Pennsylvania</u>. Finance and International Business, 1985. Courses at <u>Université de Compiègne</u> and <u>Delft Institute of Technology</u> and internships at Ford France S.A. and Frans Swarttouw B.V. (Netherlands).
- Certified Fellow in Production and Inventory Management (CFPIM)
- Certified in Supply Chain Management (CSCP)
- Certified in Integrated Resource Management (CIRM)
- Certified in Purchasing Management (Lifetime <u>C.P.M.</u>)
- Certified in Transportation and Logistics (CTL)

### Certifications and Affiliations

Past President, Boston <u>APICS</u>. Past President, New England Roundtable of the Council of Supply Chain Management Professionals (<u>CSCMP</u>). Member, Institute for Supply Management (<u>ISM</u>) and American Society of Transportation and Logistics (<u>AST&L</u>, now part of the Association for Supply Chain Management). Member of the <u>Ptak Prize</u> Selection Committee, <u>International Supply Chain Education Alliance</u> (ISCEA).

# Languages

English (native), French (fluent), Portuguese (proficient).

**Publications and Interviews** 

June 21, 2021 Page 12 of 26

Note: Hyperlinks are provided to facilitate drill-down, however some older links may no longer be functional if the source file location has changed or been deleted.

## **SELECTED BOOKS**

Guide to Supply Chain Management, The Economist Books (2009)
Optimal Supply Chain Management in Oil, Gas and Power Generation (PennWell, 2012)
Reinventing the Energy Value Chain: Supply Chain Roadmaps (PennWell, 2021)

## **SELECTED OTHER PUBLICATIONS**

May 2019: "Supply Chain Security Guidelines on Provenance." For North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Supply Chain Working Group (SCWG).

April 2016: "Ofrecen Ahorros en Proyectos Energéticos." Interview of David Jacoby in El Norte Magazine, Mexico City.

April 2016: ""BSI offers \$2 Billion Savings in Energy Projects." Interview of David Jacoby in Negocioselnorte and Negocios Magazines, Mexico City.

January 2014: "<u>Traffic Jam: Is Your Supply Chain Ready for the Global Infrastructure Crisis?</u>" Interview of David Jacoby in APICS Advantage Magazine.

October 2013: "<u>Strategies for Managing Customer and Supplier Risks</u>," Interview of David Jacoby. Economist Intelligence Unit. Sponsored by Dun & Bradstreet.

January 2012. "<u>Rate Outlook.</u>" Presentation for the major annual multimodal "panel of experts" webcast, produced and sponsored by <u>Logistics Management magazine</u>.

November 2012: Major Accident Prevention and Lessons Learned in Oil & Gas: Four Guidelines and Thirteen Best Practices for Governing Safe Supply Chains, <u>Abu Dhabi International Petroleum Exhibition and Conference</u> (ADIPEC).

September 2012: Optimal Supply Chain Management in Oil, Gas and Power Generation, PennWell.

August 2012: <u>SCMR Exclusive Interview with David Jacoby on the State of the Ocean Cargo</u> Market

June 2012: GE Oil & Gas Newsletter - " Bridging from Thermal to Renewable Power Supply Chains"

March 2012: Energy Tribune article on Tumaco Pipeline

March 2011: <u>Registering and Transporting Hazardous Substances</u>, Offshore Technology Conference

February 2011: 2011 Intermodal Freight Rate Outlook for Trades to and from North America, Logistics Digest

December 2010: Planning Your Carbon Footprint, Bangkok Logistics Digest

November 2010: Get Off Your Diagonal, Bangkok Logistics Digest

October 2010: <u>Petroleum Pride: Winners of BSI's 2010 Oil and Gas Supply Chain Awards</u>, LOGae

September 2010: 10 Tips for Choosing a Carrier or 3PL, Parcel Magazine

September 2010: <u>Leading Supply Chain Transformations with Credibility</u>

August 2010: Green Supply Chains by 2020

July 2010: 2010 Mid-Year Rate Outlook: Paying a Premium, Logistics Management

June 21, 2021 Page 13 of 26

July 2010: The Return of PPP

May 2010: Too Small to Fail: A New Model for Regulatory Oversight

April/May 2010: The Outlook for Motors and Drives in 2010: Strategies for Success, e-Drive

April 2010: Planning for the Long Haul

March 2010: The Oil Price 'Bullwhip': Problem, Cost, Response, Oil & Gas Journal

March 2010: Supplier Development: More Than a Good Idea

February 2010: Oil Price Volatility and How to Avoid It, Energy Tribune. February 2010: Recognizing Excellence: BSI Supply Chain Award Winners

February 2010: Using Flexible Capacity Techniques to Thrive in a Volatile Economy

January 2010: 2010 Rate Outlook Update, Logistics Management Magazine.

January 2010: W-Shaped Economy or Long Wave?

December 2009: Guide to Supply Chain Management, The Economist and Profile Books

December 2009: Supply Chain Report Card, LOG Middle East

November 2009: <u>Contracting in Volatile Markets</u> October 2009: Career Advice for Young Professionals

September 2009: Capacity Concerns Could Be The Next Chemicals Supply Challenge,

Purchasing Magazine

September 2009: <u>Your Supply Chain Costs Have Decreased by 12%</u> August 2009: <u>Good, Better, Best. Supply Chain Excellence Awards</u> July 2009: The Bullwhip Effect in Global Trade - This is One Wild Bull

June 2009: The New Era of Post-Chinese Sourcing

June 2009: Energy Outlook, ISM Material Management News

May 2009: What's Your Middle East Strategy?

April 2009: The Ocean Market: Overcapacity Until 2012

February 2009: Send an RFQ Today

January 2009: Window of Opportunity: 2009 Logistics Rate Outlook, Logistics Management (by

John Quinn with contributions by Boston Strategies International).

December 2008: Infrastructure Investment: The Supply Chain Connection, CSCMP Supply

Chain Quarterly.

December 2008: How should the global financial crisis affect your freight strategy?

November 2008: Technological Innovations in Logistics and the Extended Supply Chain

October 2008: Intermodal Integration – Responding to Market Needs

September 2008: <u>RFID Solutions</u>
August 2008: <u>Air Express Solutions</u>

August 2008: Global Logistics – Ups and Downs, APICS e-news.

July 2008: Paperless Management Solutions

July 2008: 2008 Mid-Year Rate Outlook Update, Logistics Management Magazine.

June 2008: The Elusive Global Transportation Solution

May 2008: How Long Will the East-West Trade Imbalance Last? PARCEL Magazine.

May 2008: Can Western Manufacturers Beat the Competition? APICS Magazine.

May 2008: The Art of High-Cost Country Sourcing, Supply Chain Management Review.

May 2008: Fleet Management Solutions

April 2008: Logistics Outsourcing – It's Not About Reducing Costs

March 2008: "Shippers Compliance in Freight Transportation & Logistics" (Governance, Risk,

and Compliance Handbook)

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March 2008: "Carriers Compliance in Freight Transportation & Logistics" (Governance, Risk, and Compliance Handbook)

March 2008: The Shanghai Connection, World Trade Magazine.

March 2008: Visibility and the Role of Government in Container Security

February 2008: <u>RFID – The Solution to Better Baggage Handling</u>, Ground Handling International.

February 2008: Chemicals Markets Getting More Complex, Purchasing Magazine.

February 2008: Perfecting Your Supply Chain, PARCEL Magazine.

February 2008: Best Solutions in Supply Chain Management

January 2008: 2008 Logistics Rate Outlook, Logistics Management Magazine.

November 2007: Going Global – The Key is People, PARCEL Magazine.

March 2007: Variable Energy Costs and Strategic Sourcing, World Trade Magazine.

November 28, 2007: Intermodal, Infrastructure Investment and Financing, <u>Transport Events</u>, <u>3rd</u>

Trans Middle East Exhibition, InterContinental Citystars, Cairo, Egypt.

November 13, 2007: RFID's Impact on Privacy and Security, CILIP, RFID in Libaries

Conference via live video link, QEII Conference Center, Westminster, London.

October 31, 2007: Management: Latest Developments in Supply Chain and Global Logistics

Industry, <u>PARCEL Magazine</u>, Parcel Shipping and Distribution Forum, Hyatt Regency O'Hare, Chicago IL.

October 23, 2007: Dubai and the Changing Face of Middle East Logistics, a webinar

October 23, 2007: Energy Prices and the Supply Chain: The Outlook of Fuel Surcharges,

<u>Institute of Supply Chain Management (ISM)</u>, <u>NAPM Twin Cities Fall Conference</u>, Minneapolis Marriott Airport Hotel, Bloomington, MN.

*March 23, 2007:* The Asian Sourcing Boom: How Long Will it Last, a summary of Boston Strategies International's third annual State of Strategic Sourcing Study.

March 29, 2006: Supply Chain Benefits of Transportation Infrastructure Improvements,

Transportation Research Board (TRB), Conference on Transportation and Economic

Development (TED 2006), Little Rock AK

March 1, 2006: "Radio Frequency Identification (RFID) Comes of Age," Dallas, TX

June 2005: Measuring Sourcing Performance: What's the Mystery? Purchasing Magazine.

May 2005: Swagging the Biggest Decisions You Make, Purchasing Magazine.

March 2005: Mitigating High Raw Material Prices, Purchasing Magazine.

February 2005: Focus on the Right Suppliers, Purchasing Magazine.

February 2005: Mega-Sourcing – Do You Have the Skills? Purchasing Magazine.

January 2005: The New Economics of Partnering, Purchasing Magazine.

July 2005. "Strategic Sourcing: Getting Maximum Points from Game Plan Variety," APICS Magazine.

2005. "Business 2010: Retailing Embracing the Challenge of Change," Economist Intelligence Unit.

May 2005. "The New Face of Purchasing," Economist Intelligence Unit.

March 2005. "High-Impact Sourcing," Survey Feedback Report.

January 2005. "Strategic Sourcing Impact Study," Inside Supply Management.

August 19, 2004. "Demand to Fill Top Slots With Absolute Top Performers," C-Speak.

April 8, 2004. "Developing Skills for the Era of Mega-Sourcing," HR Executive.

March 2004. "What's Next in the Procurement Arena," APICS Performance Advantage.

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# **Selected Presentations**

September 29, 2020: The Future of Supply Chain Management, IIM Ranchi, Ranchi, Jharkhand, India.

May 11, 2020: Supply Chain Security Guidelines on Provenance. North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Meeting. March 30, 2020: Achieving Breakthrough Success in the Battery Value Chain. International Battery Partnering & Investment Forum. Orlando.

December 3, 2019: Investing in Energy Innovators. Bank of Montreal – Boston Growth Conference.

October 19, 2019: Confronting Climate Change (Moderator). Lauder Institute Tri-Annual Global Reunion. New York.

June 24, 2019: Achieving Breakthrough Success in the Battery Value Chain. Advanced Automotive Battery Conference. San Diego.

June 4, 2019: Supply Chain Security Guidelines on Provenance. North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Supply Chain Working Group (SCWG). Orlando, Florida.

April 24, 2019: Economics of Offshore Wind in and Around New York. New York Energy Week Meet-Up, New York.

December 2018: Debate: Top 10 Reasons for Tariffs. APICS North Shore, Burlington MA. October 2018: "Tariffs, Trade Wars, and Your Global Supply Chain." New England Supply Chain Conference and Exhibition. Marlborough, MA.

September 2018: "Shifting Business Models in the Power Industry." Institute for Supply Management's Utility Purchasing Management Group. Scottsdale, Arizona.

June 2018: "Changing Business Models in the Power Industry." Electrify Europe conference (formerly PowerGen, by PennWell). Vienna, Austria.

June 2018: "Navigating the Landscape of Structuring Partnership Agreements." Presentation to the 18th Annual Advanced Automotive Battery Conference, San Diego.

May 2018: "Leadership in Global Financial Markets." Panel Discussion moderated by Mauro Guillen, Director of The Lauder Institute and Dr. Felix Zandman Professor of International Management at the Wharton School, with co-panelists Laxman Narasimhan WG'93, CEO, Latin America and Europe Sub-Saharan Africa PepsiCo, Inc., and Michelle Tien WG'03, COO, Credit Suisse.

October 2017: Comparative Economics of Combined Cycle, Solar, Wind, Hydro, and Geothermal Power. University of Calgary, Haskayne School of Business, Calgary, Alberta, Canada.

October 2016: The Impact of Energy Prices on Logistics & the Global Supply Chain.

Marlborough, MA, 2016 New England Supply Chain Conference & Exhibition

May 2016: "Global Strategic Capital Project Management and Supply Chain Management in Oil and Gas Depression." Keynote Presentation and related Workshop, China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2016: "Hydrocarbons Infrastructure in Mexico." Moderator of a Panel Discussion. Second Mexico Gas Summit. San Antonio, USA. Produced by Industry Exchange LLC.

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June 2015: "Negotiating Skills for Deals That Benefit All Parties." Workshop at the 3rd Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry." GFMI. Houston, USA.

May 2014: "Negotiating Production Sharing Agreements (PSAs) and Joint Operating Agreements (JOAs)". Workshop at 2nd Annual Contract Risk Management Forum for Oil & Gas. Sponsored by TBM Evolution. Berlin, Germany.

May 2014: "Navigating and Optimizing the Supplier Certification Process at National and International Oil Companies." Workshop at China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2014: "Pipeline and Oilfield Security Technologies: Global Benchmarks and State of the Art." Workshop at the Fifth Colombia Oil & Gas Conference and Exhibition. Bogota, Colombia.

May 2013: "Optimal Supply Chain Management: The Global Supply Opportunity." Speech to the China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2013. "Risk Management in Oil & Gas," Procurement and Supply Chain Management Forum for Oil & Gas, produced by TBM Evolution, Berlin, Germany.

November 2012: Major Accident Prevention and Lessons Learned in Oil & Gas: Four Guidelines and Thirteen Best Practices for Governing Safe Supply Chains, <u>Abu Dhabi International</u> Petroleum Exhibition and Conference (ADIPEC).

October 18, 2012. Boston, Presentation to the Society of Petroleum Engineers' New York and New England Petroleum Section, Massachusetts Institute of Technology (MIT). "Safe Supply Chain Design."

September 24-26th, 2012, London, Strategic Sourcing Workshop at 6th Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry.

January 25th, 2012, Rate Outlook Webcast, Logistics Management Magazine.

October 24, 2011. "BRIC Plus: Uncovering Economic and Supply Chain Success in the New Emerging Economies," 2011<u>APICS International Conference & Expo</u>, Pittsburgh, Pennsylvania. September 26-28, 2011. <u>5th Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry conference</u>, Barcelona, Spain.

May 4, 2011. "Global Trade Restrictions and Related Compliance Issues Pertaining to Oil and Gas Production Chemicals," Offshore Technology Conference (OTC), Houston Texas.

January 27, 2011. "2011 Logistics Rate Outlook," Logistics Management webcast.

October 10, 2010: TransOman Transport, Shipping, and Logistics Show, Muscat, Oman.

October 5, 2010: "Protecting and Enhancing Energy Infrastructure Projects in the Middle East – Mitigating Project Risk and Safeguarding Investments, PowerGen Middle East, Doha, Qatar.

September 20, 2010: "Value-Based Pricing in the Oil and Gas Supply Chain," <u>The OFS Portal LLC</u> 8th Annual Fall Retreat, Houston, TX (USA).

June 16, 2010: "Success Stories in Supplier Development," APICS South Shore Chapter, Taunton, Massachusetts.

June 15, 2010: "Basics of Supply Chain Risk," APICS Providence Chapter, Providence, Rhode Island.

May 26, 2010: "<u>Future Management Organization for Mediterranean Ports and the Maritime Sector</u>," 8th Mediterranean Logistics and Transport Forum, Barcelona, SPAIN. Click <u>here</u> to see a copy of the presentation speech.

May 18, 2010: "Sourcing 2010 and Beyond," Round Table on Sourcing, Boston APICS Dinner Meeting, Waltham, Massachusetts. Click <a href="here">here</a> to see an excerpt of the presentation slides.

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May 18, 2010: "Supply Chain Roundtable on Sourcing," APICS Chapter Events, Waltham, Massachusetts.

April 22, 2010: "Rails, Roads, Water and Air: Logistics, Inventory and Distribution," Live Television Panel Discussion, Institute for Supply Management, Phoenix AZ.

January 28-29, 2010: "<u>Economic Outlook and Strategies for Success</u>," Motor, Drives & Automation Systems 2010, Orlando, Florida. Click <u>here</u> to see an excerpt of the presentation slides.

January 28, 2010: "2010 Logistics Rate Outlook," Webcast, 2pm Eastern.

January 20, 2010: "Managing Procurement for Total Supply Chain Value," Purchasing Managers Association of Boston (PMAB), Executive Roundtable, Concord, Massachusetts.

November 24, 2009: "Supply Chain: What's it Worth?," Fifth Trans Middle East Conference and Exhibition, Bahrain. Click <a href="here">here</a> to see an excerpt of the presentation slides. Click <a href="here">here</a> to see photos from the conference.

October 27, 2009: "Supply Chain: The New Revenue Generator," The Next Generation Supply Chain, Virtual Conference sponsored by the Supply Chain Management Review.

October 18, 2009: "Realizing Supply Chain Value through Smart Freight Management," Supply Chain Management Forum, Dubai.

October 12, 2009: "<u>Deriving Value from Supply Chain Innovation in Troubled Economic Times</u>," The Health and Personal Care Logistics Conference, Longboat Key, Florida. Click <u>here</u> to see an excerpt of the presentation slides.

October 7, 2009: "Winning Supply Chain Strategies and Financial Benchmarks," APICS New York City Chapter, New York City.

October 7, 2009: "<u>The New Global Supply Chain</u>," Council of Supply Chain Management Professionals' Manhattan Roundtable, New York City. Click <u>here</u> to see an excerpt of the presentation slides.

April 4-6, 2009: Keynote Presentation, Supply Chain Management: Realizing the Potential, Third Annual Supply Chain Management Symposium, Hotel Meridien, Khobar, Saudi Arabia. April 4-6, 2009: Eliminating the Bullwhip Effect by Synchronizing Supply Chains, Third Annual Supply Chain Management Symposium, Hotel Meridien, Khobar, Saudi Arabia. Click here to see a photo from the symposium.

January 29, 2009: Panel of Experts Webcast, 2009 Rate Outlook, Logistics Management Magazine.

January 20, 2009: International Sourcing and Cross-Border Logistics, <u>APICS</u>, Boston, MA November 23-25, 2008: Supply Chain — From Concept to Cash, <u>Transport Events</u>, <u>4th Trans Middle East</u>, Dubai, UAE. <u>Click here to see photos from the conference</u>.

October 6, 2008: Global Logistics — Hot Spots and Major Developments, New England Supply Chain Conference & Exhibition 2008, Marlboro, MA.

September 24-26, 2008: Supply Chain Organization Development, Southwest Supply Management Conference, Institute for Supply Management (ISM), Dallas, TX.

September 24-26, 2008: Keynote Presentation, Strategically Sourcing Transportation:

Competition vs. Cooperation, Southwest Supply Management Conference, <u>Institute for Supply Management (ISM)</u>, Dallas, TX.

September 17-18, 2008: Ports Can Increase Margins Through End-to-End Supply Chain Brilliance, PorTech Asia 2008, Tianjin, China.

September 14-16, 2008: Global Logistics: The Next Generation, 2008 APICS International Conference and Expo, Kansas City, Missouri.

June 21, 2021 Page 18 of 26

September 9, 2008: <u>Business Forecasting and Planning Excellence Conference</u>, Las Vegas, Nevada. (Chairperson)

July 22, 2008: 2008 Mid-Year Rate Outlook—Uncertainty Persists, 2008 Mid-Year Rate Outlook Webcast, Logistics Management Magazine.

*June 5-6, 2008:* Global Economic Trends and Development in Containerised Trade Growth, Transport Events, 6<sup>th</sup> ASEAN Ports and Shipping 2008, Ho Chi Minh City, Vietnam.

March 25, 2008: RFID in Ground Handling, Transport IQ (IQPC), Ground Handling Excellence in Passenger Services Conference, Kuala Lumpur, Malaysia.

March 20, 2008: Supply Chain Strategy, a webinar.

March 6, 2008: Logistics In Gioia Tauro, a webinar.

March 6, 2008: Supply Chain Organization Development, a webinar.

*March* 6, 2008: RFID and Security, <u>International Air Transport Association (IATA)</u>, <u>World Cargo Symposium</u>, Rome, Italy.

February 21, 2008: Logistics In Seattle, a webinar.

*January 30, 2008:* 2008 Rate OutlookUncertainty Abounds, <u>2008 Logistics Rate Outlook</u> Webcast, <u>Logistics Management Magazine</u>.

January 30, 2008: How Will Western Manufacturers Survive?, a webinar.

January 8, 2008: Logistics in New York, a webinar.

December 13, 2007: Logistics in Shanghai – Along the Yangtse, a webinar.

*November 28, 2007:* Intermodal, Infrastructure Investment and Financing, <u>Transport Events</u>, <u>3rd Trans Middle East Exhibition</u>, InterContinental Citystars, Cairo, Egypt.

November 26, 2007: Logistics in Cairo-Through the Suez Canal, a webinar.

November 19, 2007: Supply Risk Management, a webinar.

November 13, 2007: RFID's Impact on Privacy and Security, CILIP, RFID in Libraries

Conference via live video link, QEII Conference Center, Westminster, London.

October 31, 2007: Management: Latest Developments in Supply Chain and Global Logistics Industry, PARCEL Magazine, Parcel Shipping and Distribution Forum, Hyatt Regency O'Hare, Chicago IL.

October 23, 2007: Dubai and the Changing Face of Middle East Logistics, a webinar

October 23, 2007: Energy Prices and the Supply Chain: The Outlook of Fuel Surcharges,

<u>Institute of Supply Chain Management (ISM)</u>, <u>NAPM Twin Cities Fall Conference</u>, Minneapolis Marriott Airport Hotel, Bloomington, MN.

September 27, 2007: Multimodal Synergy – Integrated Capability in Logistics and

Transportation, <u>Transport Events</u>, <u>4<sup>th</sup> Thai Ports and Shipping Exhibition and Conference</u>, Imperial Queen's Park Hotel, Bangkok, Thailand.

September 27, 2007: Energy Prices and the Supply Chain: Charting a New Course, <u>IPC</u>, <u>Midwest Manufacturing Conference and Exhibition</u>, Donald E. Stevens Convetion Center, Rosemont, IL.

September 18, 2007: Is there ROI in RFID? a webinar

August 21, 2007: Benchmarking Your Supply Chain Savings, a webinar

August 7, 2007: Energy Prices Reshaping the Supply Chain, a webinar

July 23, 2007: Budgeting for Volatility, a webinar

*June 4, 2007:* Sourcing from China, <u>Journal of Commerce</u>, <u>3<sup>rd</sup> Annual China Trade & Logistics</u> Conference, Savannah International Trade and Convention Center, Savannah GA.

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*April 25-27, 2007:* Budgeting and Forecasting in a Highly Volatile Environment, <u>Institute of Business Forecasting and Planning (IBF)</u>, <u>Demand Planning and Forecasting: Best Practices Conference 2007</u>, Loews New Orleans Hotel, New Orleans LA.

*March 23, 2007:* The Asian Sourcing Boom: How Long Will it Last, a summary of Boston Strategies International's third annual State of Strategic Sourcing Study.

March 21, 2007: Low-Cost Country Sourcing: Sweeping Up, National Association of Purchasing Management Southern New Hampshire Chapter, Concord NH

March 5, 2007: Courting the Consumer: Creating Dynamic Brands in Retail and Consumer Goods, Vendor Compliance Federation Conference, Marco Island FL

March 1, 2007: The Impact of Low-Cost Country Sourcing on the Chemicals Supply Chain, Institute of Supply Chain Management (ISM) Conference, World Gold Village, Renaissance Hotel, St. Augustine FL.

February 16, 2007: Benchmarking Your Supply Chain Savings, a webinar

January 31, 2007: Logistics Outlook 2007 Webcast, Logistics Management Magazine.

*January 23, 2007:* Energy Prices Reshaping the Supply Chain: Charting a New Course?, Joint meeting of <u>APICS</u> Providence and <u>Purchasing Managers' Association of Rhode Island (PMARI)</u>, Warwick, RI.

*January 11, 2007:* Global Trade and Technology: The Crossroads, <u>Beverly Chamber of Commerce</u>, Beverly MA

*January 8, 2007:* Data Explosion: Redefining Metrics, <u>Purchasing Managers Association of Boston</u>, Lexington MA

*November 27, 2006:* RFID: Revolutionizing Baggage Handling, <u>Ground Handling International</u> (<u>GHI</u>), 8<sup>th</sup> Annual Ground Handling International Conference, Monaco

*November 16, 2006:* Supply Market Intelligence: What is Your Supply Market IQ? <u>APICS</u> Fairfield County, Fairfield CT

November 14, 2006: Supply Market Intelligence: What You Don't Know Can Hurt You, Resources Global Professionals, Westford MA

October 25, 2006: RFID: Mining Mega-Data for Enhanced Forecast Accuracy, <u>Institute of Business Forecasting and Planning (IBF)</u>, <u>Demand Planning and Forecasting Conference 2006</u>, Orlando FL

October 18, 2006: Taking Smarter Risks by Forecasting Complex Supply Markets, <u>APICS</u> Princeton-Trenton-Monmouth-Ocean Chapter, Columbus NJ

October 12, 2006: Minimizing Risk by Forecasting Supply Markets, <u>APICS</u> Monadnock Chapter, Keene NH

October 2, 2006: Is there ROI in RFID?, Northeast Supply Chain Conference & Exhibition 2006, Marlborough MA

September 26, 2006: The Asian Sourcing Boom: How Long Will it Last?, <u>Distribution Business Management Association Annual Conference</u>, Las Vegas NV

September 14, 2006: What is Your Supply Market IQ?, Council of Supply Chain Management Professionals (CSCMP) NYCONN Roundtable, Dobbs Ferry NY

September 12, 2006: Supply Market Intelligence: What You Don't Know Can Hurt You, APICS North Shore, Woburn MA

*June 12*, 2006: Building a Secure Supply Chain with RFID, <u>Vendor Compliance Federation</u> Supply Chain Conference, Teaneck NJ.

May 17, 2006: "The Logistics of Global Outsourcing," APICS New Haven.

June 21, 2021 Page 20 of 26

May 1, 2006: "The New Age of Purchasing," <u>Purchasing Managers Association of Boston</u> Top Management Night, Boston MA.

April 24, 2006: "Managing Supply Risk," client presentation in Dharan, Saudi Arabia. *March 29, 2006:* Supply Chain Benefits of Transportation Infrastructure Improvements, Transportation Research Board (TRB), Conference on Transportation and Economic Development (TED 2006), Little Rock AK

March 1, 2006: "Radio Frequency Identification (RFID) Comes of Age," Dallas, TX February 28, 2006: "Creating Dynamic Brands in Retail/Consumer Goods," San Francisco CA January 19, 2006: "Designing Sourcing and Logistics for Flexibility and Innovation," Massachusetts Biotechnology Council, Boston Logan Airport

## References

## **Selection of endorsements from LinkedIn:**

- "David Jacoby is one of the most knowledgeable supply chain professionals I have ever met! He had an amazing depth, in multiple facets of materials management, and had consistently contributed to the profession in many ways. It is always a pleasure dealing with Dave one of the best in the business!"
  - o Kenneth B. Glasser, CPIM, C.P.M., Global Sourcing Manager, Axcelis
- "David Jacoby is a brilliant consultant with outstanding analytical capabilities applied to a long term vision of what matters. I've known him for more than 20 years and have seen how he shaped his company to become what it is today, a remarkable company that delivers differentiating value to its customers. I strongly recommend him and his company."
  - o Christophe Poittevin, Software Sales Manager, IBM Software Group
- "David and his team at Boston Strategies did an outstanding job on our supply chain strategy project at NYCHA. Their research and recommendations were thorough and data-driven. David is an expert who never stops learning and a consummate professional who focuses on providing value for his clients and his profession. [He delivers] great results, expertise, and high integrity."
  - Gary Smith CPIM, CSCP, Director of Supply Chain Operations, New York City Housing Authority
- "As a consultant to multinational companies on supply chain strategy and performance for over 20 years, David has the rare ability and creativity to make the complicated simple."
  - o St. Claire Gerald, CSCP, Former Director Supply Chain Management, Foot Locker
- "David is a supply chain management expert who combines top notch analytical skills with over two decades of global experience. His counsel has been invaluable and I highly recommend him."
  - o Charles Gamble, Senior Vice President-Client Services, Tangoe
- "David has the ability to analyze complex problems and present solutions in a clear, concise, practical manner. His primary research is excellent and he has consistently added a

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welcomed level of sophistication to the field of supply chain management. I am currently using his new book in university level courses and it has been well received by my students."

- o Richard Weissman, Assistant Professor, Endicott College
- "I highly recommend David for his expertise in strategy development involving global markets. His firm can work across such a diverse array of industries and deliver an insight based on incredible research capabilities and current knowledge of market conditions."
  - o Jeffrey Kearns, Finance and Systems Manager at General Dynamics
- "David is a top-level consultant with an outstanding capacity of synthesizing the complexity of the SCM body of knowledge while at the same time offering original perspectives. He has the right mix of academic background and hands-on experience to get the job done!"
  - Massimo Marchi, MBA, CSCP, CLSSS, Director of Supply Chain Planning and IT, Beretta
- "David is a highly respected thought and practice leader in Supply chain management. He has consulted for over 20 years in Procurement, Transportation, Logistics, Manufacturing, Economics, and International Trade; and he is excellent at putting this acquired knowledge and functional experience to work solving complicated business issues. Having seen his work, heard his presentations, and read his white papers, I high recommend him and Boston Strategies in solving your business challenges and or in developing your Supply Chain Strategy."
  - o Greg Cornelius, CSCP, Director, Supply Chain Management, Haemonetics

Book Reviews of "Guide to Supply Chain Management"

## AS OF MARCH 1, 2012

- "I never really understood what supply chain management was until I read this book. It seemed to mean something different depending on who I was talking to. Now I get it."
- "I'm a university professor, and I am really impressed at how thorough the book is. From the preface to the glossary and the end notes, everything is well-documented, which makes the arguments and Jacoby's framework for supply chain management trustworthy and believable. Overall, the book is a credit to the Economist brand."
- "As a supply chain trainer and author, I am always pleased to read books that add to my knowledge and this book certainly made me stop and reflect many times = great! Let down slightly by the publishers small reproduction of the many charts and tables; overall however, this is a very good piece of work!"
- "The work sorts through some of the mythos about supply chain management and focuses on the core activities that add measurable value."

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- "An excellent guide and, a must read not only for C-level managers but also for inclusion in curricula in business studies... brilliant in explaining the myths and realities of the various elements that are critical components of the supply chain."
- "If you are a novice to supply chain and often confused by conflicting definitions on what SCM is - and is not - read this book. If you are a supply chain practitioner and want some clear markers on designing a comprehensive supply chain strategy, read this book. David Jacoby's experience of over 20 years of strategic consulting on supply chain initiatives clearly comes through in this well-researched piece. The book very quickly jumps into the 4 key supply chain strategies - cost rationalization, demand-supply synchronization, customization and innovation - that organizations can pursue. And highlights early on the often forgotten point that while we can classify any function within an organizational silo, activities within them cannot be similarly silo-ed if we want to derive value. For instance, we often lump DC-Network design and an initiative such as cross-docking under the warehousing function. But how many of us look at the former activity through the lens of cost rationalization, and the latter as an enabler of synchronization? Insights, such as this, abound. The book frames the final few chapters with details on the organization structure, information systems framework and KPIs that must supplement each of these strategies. And that is when we truly comprehend the completeness of supply chain management. My only grouse is that the book went into too much of theory and detail toward the end. Maybe it was intentional, given the wide range of audience it aims to cater to. But if you can stifle some of those yawns and plough on, you will be enriched with a wealth of knowledge on how you must design, strategize, implement, measure and enhance your supply chain."
- "As a supply chain professional I found this book to be immensely helpful. It reduces important supply chain principles to quantifiable and applicable guidelines. A good read and a must for anyone looking to leverage value from your supply chain "
- "This is a great book that provides a concise yet thorough overview of supply chain management. It is educational and actionable filled with well-supported arguments and excellent, illustrative anecdotes. The book is not just for supply chain professionals. It is for any business person that wants to help take their company to the next level. Having read it and written notes in the margins, I will keep it nearby as a reference guide."
- "This book is very informative for anyone wanting to know more about supply chain management. The examples cited, as well as the charts are extremely helpful. I believe anyone can benefit from reading this book whether or not they have direct responsibility for supply chain activities."
- "This book describes very well the ins and outs of what the Supply Chain concept encompasses. It gives an excellent global understanding and is very rich of examples from real life situations. I warmly recommend its reading.

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- "An essential tool for C-level management and their senior managers. It is clear, balanced in its objectivity and useful for achieving rapid results."
- "A strategic breath of fresh air for executives who are tired of tactical how-to books on supply chain management. It provides simple, logical guidance on how companies should think about the people, processes and infrastructure they put in place to enable the supply chains that will deliver their future.
- "A pragmatic approach for turning supply chain into a strategic differentiator, along with a treasure chest of examples showing how successful companies have done it."
- "A real-world look at how leading companies are putting supply chain management into practice for proven competitive advantage. This guide definitely belongs in your business library."

### In-Depth Book Review of 'Guide to SCM'

David Jacoby. *Guide to Supply Chain Management: How Getting it Right Boosts Corporate Performance (The Economist)*. Bloomberg Press, 731 Lexington Avenue, New York, NY 10022. Sept 9, 2009. 262 pages. ISBN: 978-1-57660-345-1. US \$29.95.

First impressions can be very misleading. At a quick glance, *The Guide to Supply Chain Management* appears to be another book geared toward grabbing the eye of the CEO. But don't be deceived; this little book packs a significant punch! There is meat in this guide, presented in a straightforward organized way as an excellent reference for CEO and supply chain student as well. It is intended to get to the core of SCM by being clear, objective, relevant, and effective and includes numerous real world examples. In great measure, this book succeeds in solidly delivering on those goals.

The author matches years of experience with anecdotes, examples, and research derived from an impressive list of corporations, professional organizations, and academics. The book starts with a short history of SCM, highlighting the key problem of balancing supply and demand. Along the way, the author examines cost, security, legislative compliance, consumer safety, and environmental protection issues in making supply chain management the "hot topic" that it is today.

The focus of this guide though is on supply chain strategy. Supply chain strategy is an evolving and dynamic activity to which specific SCM tools, techniques, and metrics must be aligned. Even the organizational positioning of the supply chain function within the firm is critical to implementing a successful strategy. There is a clear distinction between supply chain management and supply chain strategy. Supply chain management provides customer benefit through increased efficiency, reliability, flexibility, and innovation. Supply chain strategy is all about putting these principles into action. Supply chain strategy flows from the business strategy and for successful firms, requires careful consideration.

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This guide integrates that strategy through a framework containing four individual sequenced strategies – rationalisation, synchronisation, customisation, and innovation.

Rationalisation is the first strategy explored, focusing on low cost competition. Among the key elements discussed are strategic sourcing and outsourcing, lean manufacturing with all its familiar tenets, and product standardization and simplification. Consignment practices, vendor managed inventory, transportation mode selection, cross-docking, by-passing inventory tiers and equipment pooling are among the many other rationalisation techniques described in the text.

The follow-on strategy is synchronisation – competing on reliability of service. Techniques such as constraint management, just-in-time inventory, the Perfect Order, Make-to-Order practices, Sales and Operations planning, and risk management are among the techniques described in sychronisation, and in most cases, illustrated with real world examples. Flowing from synchronisation is the customisation strategy or competing on customer intimacy. The guide highlights techniques such as control of the customer relationship, value analysis, and customer knowledge management and profitability management. Customisation places an emphasis on personal interactions and the goal of closely linking supply chain partners over time through value-adding services. Again, the author relies heavily on real world anecdotes and examples to illustrate these concepts.

The final strategy – which follows from customisation – is the innovation strategy or competing through a rapidly changing supply chain. Continuous feedback, product development, prototyping and product life-cycle management are among the practices described for successfully competing in an innovative environment. Firms that compete with innovative supply chains are identifiable not only by top tier positioning with the firm, but also by the amount of synergy and integration built into the organization.

The guide follows the strategy framework discussion with a chapter on organizing, training, and developing the staff to support each individual strategy. One of the highlights here is the linking of each supply chain strategy to the placement of SCM within the organizational structure of the firm. As strategy moves from rationalisation to innovation, the seat of the supply chain function moves closer to the top of the organization with the focus becoming more horizontal than vertical. Typical organization charts included here help to emphasize these points.

Of course, no strategy is workable without a set of enablers such as information technologies and metrics systems and the guide illustrates these using an enterprise resource planning system as the starting point. The book offers a selection of top-level corporate metrics as well as specific metrics linked to each strategy within the integrated framework. The guide concludes with an insightful discussion of the challenges for SCM in the future.

This guide covers a lot of territory, but does so in a very clear and objective manner. If the reader is looking for an in-depth discussion specific SCM techniques or strategic issues, this is not the text – there are other works that can provide that detail. But for corporate leadership or the SCM student looking to link the basics to a strategic framework, this guide in an excellent resource and would be a great addition to the practitioner's library. Reviewed by

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# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 75 of 315 PAGEID #: 4550 CONFIDENTIAL

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David Jacoby

Exhibit 3

# Rebuttal of the Expert Report of Gerald Sabino

in the Case of

**Great Southland Limited** 

 $\mathbf{v}_{\bullet}$ 

Landash Corporation, et al.

**CONFIDENTIAL** 

By David Steven Jacoby

June 25<sup>th</sup>, 2021

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## 1 Overview

# 1.1 Brief Executive Summary

I was asked to offer an analysis and an opinion, based on my background and experience in supply chain management, on the points made in the Expert Report of Gerald Sabino, in the context of whether and to what degree XPO may have been responsible for the actions of Afif Baltagi, in his capacity as XPO's Branch Manager of XPO's Houston, Texas facility, in the Ponzi scheme orchestrated by Jason Adkins.

I reviewed the Sabino report made available to me by Carlile Patchen & Murphy LLP. I consulted some of my prior client files, and did a small amount of web research.

Based on my review and my experience, it seems that Sabino's points reduce to five arguments, which are incorrect and misleading.

- 1. "It's GSL's fault for being naïve and gullible."
- 2. "It's the warehouse's fault."
- 3. "The documents were unauthorized by XPO."
- 4. "Disputes of cargo ownership are normal."
- 5. ""Audits would not have stopped the crime."

In my view, XPO's actions and inactions enabled this fraud, and cannot legitimately offload the liability to other parties, for the following reasons:

- 1. GSL reasonably relied upon XPO's representations.
- 2. The warehousing distinction is false and misleading.
- 3. The documents were authorized by XPO since they came from a bonafide XPO employee through an official XPO email account.
- 4. Disputed ownership of cargo is highly unusual and should have triggered a security audit.
- 5. A security audit would probably have uncovered the fraud.

# 1.2 My Professional Background

I have been consulting for 32 years in supply chain management, operations strategy and performance improvement, primarily in the transportation, logistics, energy, and automotive sectors. Much of my work has consisted of benchmarking and industry best practices studies. My clients have included transport and logistics companies such as UPS, FedEx, Iron Mountain, CSX, Jacksonville Port Authority, and Amtrak, as well as shippers including A.T. Cross, Mercedes-Benz, and General Motors. I've also consulted to information systems providers such

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as SAP, and government agencies such as the U.S. Department of Transportation and the New York City Housing Authority.

Before founding Boston Strategies International, I served as a consultant in the logistics, transportation, procurement, operations management, and supply chain management practices of management consulting firms including Kearney, Temple Barker & Sloane (now Oliver Wyman) and a boutique firm called Carlisle, Fagan, Gaskins & Wise. I also taught Operations Management at Boston University's graduate school of business.

I wrote *Guide to Supply Chain Management* (The Economist, 2009) and other books on supply chain management, logistics and trade. I also wrote both the Shippers Compliance in Freight Transportation & Logistics and the Carrier Compliance in Freight Transportation & Logistics chapters for the Governance, Risk, and Compliance Handbook (Tarantino, 2006), and have contributed several hundred speeches, articles, white papers, and webcasts for publications such as Supply Chain Management Review, Supply Chain Quarterly, and the Transportation Research Board.

My supply chain certifications include: Certified Fellow in Production and Inventory Management (CFPIM), Certified Supply Chain Professional (CSCP), Certified in Integrated Resource Management (CIRM), Certified in Purchasing Management (Lifetime C.P.M.), and Certified in Transportation and Logistics (C.T.L.), among others.

### 1.3 Retention for This Matter

I was retained by Carlile Patchen & Murphy LLP in March 2021. I am compensated at a rate of \$550 per hour. The fees I receive are not contingent on the outcome of this litigation. To my knowledge there is no conflict of interest between my work on this case and any other work I am doing or have ever done.

### 1.4 Materials Reviewed

The electronic file conveyed to me regarding this matter of Gerald Sabino's expert report was named "Scan\_0023 (3) (1).pdf" In addition, I referenced some of the documents that were previously cited in my June 14 report, notably:

- Hodgson Volume 1 + Exhibiits
- Muzi, Dominic (8-12-19), 902
- Shook, Max (8-22-2019),

I also did a small amount of research on cargo claims, Incoterms, and how some other some global freight forwarders operate.

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# 1.5 Citation Formats and Report Updation

For clarity this report cites references to deposition and other discovery material where such references may be useful. For brevity I inserted these citations parenthetically using the format "(Deponent's Name or source file name, page number of the pdf source file)," for example (Komsky, 32). Unless these references apply to a specific sentence or phrase, I placed them at the end of paragraphs for easier readability. If multiple citations apply to the paragraph I used a semicolon to separate them, for example (Musetti, 11; Hodgson, 117). External references are cited as footnotes.

I reserve the right to supplement this report should new information become available to me.

David Steven Jacoby

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## 2 Introduction

While it appears that Sabino issues 27 distinct opinions in his report – there are 19 numbered points, of which one has seven subpoints and another has three subpoints – many of them are overlapping, and collectively they boil down to five:<sup>1</sup>

1. "It's GSL's Fault for Being Naïve and Gullible; They Should Have Known Better." (Sabino's points numbered 1a, 1b, 1c, 1f, 1g, 2a, 2b, and 18)

This is not true. Companies involved in international trade typically entrust freight forwarders and other specialists with documentation pertaining to their international transactions, based on the fact that shipping documentation and letters of credit involve many specialized steps that forwarders need to be expert about, but their customers do not. Although this particular transaction may not have involved international shipping, many of the tire transactions evidently did, so it would not be out of the ordinary for GSL to use a forwarder instead of arranging the cargo shipments themselves to offload the technical burden and complexity of international shipping documentation and compliance requirements. Also, GSL had gone through the typical vetting process for XPO and, based on the Houston facility tour, placed its trust and confidence in XPO to satisfactorily execute whatever paperwork was necessary for the end-to-end process, which it purported to be able to handle.

2. "It's the Warehouse's Fault Since the Tires Were in Their Custody." (points 1d, 1e, 3, 4, 17, and 19)

This is wrong because XPO implicitly represented itself as accepting the terms of the whole transaction, from Step 1 (Landash Corporation receives a purchase order (PO) from the buyer) through Step 15 (GSL pays Landash) on February, 2016 when Baltagi led Dave Hodgson of GSL through the Roadmaster warehouse (Hodgson Volume 1 + Exhibitis, 357) and on March 14, 2016 when Baltagi wrote "Below is understood" to the 15-step transaction involving XPO (Hodgson Volume 1 + Exhibitis, 408). There were no separate Terms and Conditions proposed or executed for warehousing, loading, unloading, or inspection. Furthermore, any large shipper might assume or trust XPO (if told) that it controlled the warehouse, even if it was operated by another party.

3. "The Documents Were Unauthorized by XPO." (point 5)

This is wrong because the problematic documents seem to have been issued from a bonafide XPO employee through XPO-controlled facilities and XPO-controlled email IDs, who was supervised by XPO management, and XPO is responsible for the safety, security, and integrity of representations made by its employees and authorized subcontractors.

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<sup>&</sup>lt;sup>1</sup> The rest of his points appear to be either technical clarifications or counter-arguments.

4. "Disputes of Cargo Ownership are Normal." (point 15)

This is not true. Loss & Damage is normal, and is typically measured by logistics companies. However, two parties disputing ownership of the same cargo is unusual. Four parties disputing the same tires is extremely unusual.

5. "Audits Would Not Have Uncovered the Fraud." (point 14).

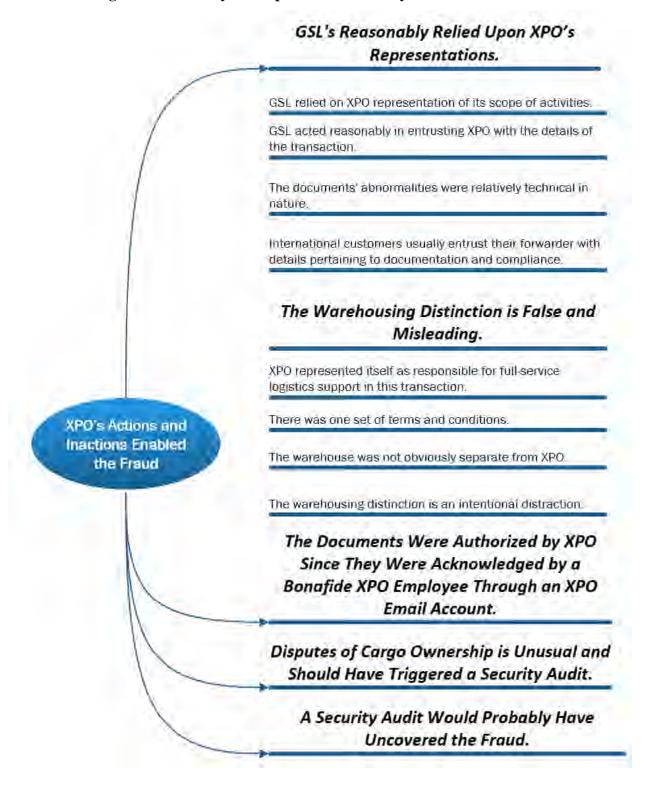
Sabino takes a narrow, and undefined, view of audits. In my experience, audits can encompass a very wide range of measures, from interviews and interrogations to physical and software surveillance. Depending on the nature and timing of the audit(s), they may have uncovered the fraud.

I disagree with these assessments. In my opinion:

- 1. GSL Reasonably Relied Upon XPO's Representations
  - a. GSL relied upon XPO's representation of its scope of activities.
  - b. GSL acted reasonably in entrusting XPO with the details of the transaction; it had undertaken and completed its due diligence of XPO based on the Houston tour, so assumed XPO was competent.
  - c. The documents' abnormalities were relatively technical in nature.
  - d. International customers usually entrust their forwarder with details pertaining to documentation and compliance.
- 2. The Warehousing Distinction is False and Misleading.
  - a. XPO represented itself as responsible for full-service logistics support in this transaction.
  - b. There was one set of terms and conditions.
  - c. The warehouse was not obviously separate from XPO.
- 3. The Documents Were Authorized by XPO Since They Came from a Bonafide XPO Employee Through an Official XPO Email Account.
- 4. Disputed Ownership of Cargo is Highly Unusual and Should Have Triggered a Security Audit.
- 5. A Security Audit Would Probably Have Uncovered the Fraud.

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Figure 1: Summary of Responses to the Analysis of Gerald Sabino



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# 3 My Assessment of the Points Raised by Gerald Sabino

## 3.1 GSL Reasonably Relied Upon XPO's Representations.

### 3.1.1 GSL relied upon XPO's representation of its scope of activities.

Baltagi's act of walking Hodgson through the facility misled Hodgson to believe that XPO controlled the warehouse, and all the storage, loading, unloading, etc. that took place within and around it, regardless of whether or not it was the day-to-day operator.

3.1.2 GSL acted reasonably in entrusting XPO with the details of the transaction; it had undertaken and completed its due diligence of XPO based on the Houston tour, so assumed XPO was competent.

Sabino assumes GSL should have critiqued each document supplied by XPO. However, once GSL had completed due diligence on XPO and chosen to work with the company, they would not have scrutinized every document. Once any customer establishes trust with a vendor, they are inclined to trust the vendor to take care of their business.

Customers typically prequalify their vendors based on a threshold criteria like size or registered capital. Then they down-select the companies based on soft factors such as the solidity of their reputation or the strength of their relationships. Finally, to make a final selection they take a plant or warehouse tour to confirm their decision. Once they make a decision on a supplier, they entrust that supplier with their business. After the tour and final decision has been made, normally people don't question or critique their vendors. They trust them to do what they are hired to do.

This is exactly what happened between GSL and XPO. GSL went through the three steps mentioned above, and after its due diligence was complete, GSL turned its attention to getting the transaction done, so it was no longer critiquing or questioning what XPO provided to them.

- GSL selected XPO based on its size. "We know them by reputation as being huge." (Hodgson Volume 1 + Exhibits, 103)
- Then they used pre-existing relationships (Adkins) to find a personal contact there. "They brought XPO to the deal. Right? A: Yes." (Hodgson Volume 1 + Exhibits, 104)
- Finally, Hodgson toured the Houston warehouse to validate the choice. Based on the tour, GSL confirmed its decision to go with XPO and its supplier selection process was over ("And obviously, I wanted to establish that Afif was a branch manager, as he was held out to me as, and that he was going to understand my part of the deal and exactly the fact that I owned the tires and he had to take my instruction.") (Hodgson Volume 1

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+ Exhibits, 180)

### 3.1.3 The documents' abnormalities were relatively technical in nature.

The abnormalities that Sabino points out on the documents are generally minor and technical in nature such that somebody outside the logistics business might not notice or question them.

He says "This document is not on XPO's letterhead which immediately calls into question its authenticity" (once on page 1 and once on page 2). Later, on page 3, he says "it would be obvious to anyone looking at this document that no such company would authorize signature of [the warehouse receipt letter]." In my experience, this type of document formatting and workflow imperfection frequently arise from information systems constraints — either somebody doesn't know how to configure the letter forms or the workflows correctly, or the application itself is designed by Information Technology (IT) staff who are more concerned about the back-end data flow than how the printed document looks.

He also observes that "this document is highly unusual because it says that XPO inspected the tires and confirmed they are new in condition, [which is not generally the responsibility of a freight forwarder]" and that "it is not standard industry practice for a warehouse branch manager to issue "inspection reports." While these observations could be technically true, a shipper would not be likely to notice the distinction between a standard acknowledgment of receipt and that same document with an additional column of information about the condition of the goods, especially since Hodgson asked for the condition and Baltagi gave Hodgson the impression that XPO controlled the warehousing.

# 3.1.4 International customers usually entrust their forwarder with details pertaining to documentation and compliance.

It was normal for GSL, as a non-US customer working with a US-centered transaction, to rely on XPO to ensure the accuracy of shipping and financing documents. Although this transaction may not have involved international shipping, many of the tire transactions did, and the diverse nationalities of the parties involved lent itself to a practice where shippers and lenders use forwarders and other specialists to deal with documentation.

Shippers could arrange all the detailed steps in their multi-tiered supply chains by themselves, and some large multinational companies do, but it's complicated, and there can be penalties for filling out paperwork wrong, especially on customs forms. Filling in the wrong dutiable value, or omitting to fully complete a form, could trigger a surcharge or penalty. Failure to check a box could stall goods movement on the other side of the world, and letters of credit are so specialized and detailed that whole sub-industries have sprung up around, for example how to game customs and duty classifications to minimize import taxes (duties), how to integrate documentation with logistics information systems, and how to finance the in-transit and cash flow aspect of international shipments using financial instruments such as letters of credit.

Therefore, when service providers such as XPO provide documents for complex transactions, most

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customers assume that they have the systems, the competence, and the expertise to do their job correctly, and don't normally question the authenticity of documents, especially intermediate or inprocess documents related to basic information like where the cargo is or if it's (still) in good condition.

## 3.2 The Warehousing Distinction is False and Misleading.

# 3.2.1 XPO represented itself as responsible for full-service logistics support in this transaction.

Sabino repeatedly attempts to separate XPO from the various logistics tasks that took place during the scam, such as unloading, receiving, inspection, storage, handling, inventory management, and loading. In 2a, he says "XPO Global Forwarding is not an inspection company." In 4, he says that "neither XPO Logistics nor XPO Global Forwarding holds itself out to be a warehousing company." In 3, he clarifies that "the warehouse, not the freight forwarder, has possession of the goods." In 4, he points out that the location of storage was not owned by XPO. In 12, he notes that "the Houston location was not a warehouse."

However, Baltagi expressly represented XPO as a warehousing company when he took Hodgson on a tour of the warehouse. Moreover, through Baltagi's acknowledgment of the email with the end-to-end process detailed (see below), which functioned like the terms that might appear on a letter of credit, XPO was responsible for executing them, regardless whether it was industry standard or not.

- "Bill of lading was made out to GSL" (step 7)
- "Tyres are despatched to XPO Logistics in Houston TX" (step 8)
- "GSL instructs XPO to release tyres to buyer" (step 14)

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### Figure 2: Logistical Instructions as per the Buyer-Seller Agreement<sup>2</sup>

#### **Transaction Process**

- 1. Landash Corporation receives a purchase order (PO) from the buyer.
- 2. Landash Corporation presents PO to GSL via email.
- 3. GSL verifies PO.
- 4. GSL confirms verification back to Landash Corporation.
- 5. Landash Corporation orders tyres from Best One Tires.
- 6. When tyres arrive at Best One Tires, GSL pays Best One Tires.
- 7. Bill of Lading is made out to GSL.
- 8. Tyres are despatched to XPO Logistics in Houston TX.
- 9. GSL has option to lodge UCC as security over the tyres.
- 10. Tyres are delivered to XPO Logistics, who are made aware they are owned by GSL.
- 11. Landash Corporation informs the buyer to inspect tyres at XPO or to pay GSL.
- 12. Payment is received into GSL's "Landash" account.
- 13. UCC (if applicable) is withdrawn.
- 14. GSL instructs XPO Logistics to release tyres to buyer.
- 15. GSL pays Landash

### 3.2.2 There was one set of terms and conditions.

The way the procedure in 4.1 above was designed, there was supposed to be only one Bill of Lading (presumably from XPO) and one set of underlying Terms and Conditions (implicit or explicit). There were *not*, anywhere in the documents provided, separate Terms and Conditions for ocean transport, overland transport, warehousing, storage, loading, inventory counting, etc. By default, therefore, XPO was representing itself to be in control of, and responsible for, the end-to-end process, with the warehouse being an agent of the forwarder.

In multi-tiered supply chains, the principal is generally ultimately responsible for the actions of its subcontractors if the principal represents that it controls their activities and there is not a separate set of Terms and Conditions. By way of analogy, BP tried to avoid the cost of the Gulf of Mexico oil spill by blaming the operator of its rig, but it sorely lost that case because BP had ultimate control over, and accountability for, what TransOcean did or did not do. BP ended up paying 98% of the fines and penalties (\$65 billion<sup>3</sup>) while TransOcean ended up paying only 2% (\$1.4 billion).<sup>4</sup>

### 3.2.3 The warehouse was not obviously separate from XPO.

Sabino mentions that the warehouse was "...obviously marked as a RoadMaster Trucking warehouse. This should have raised red flags to anyone who viewed the warehouse and

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<sup>&</sup>lt;sup>2</sup> Hodgson Volume 1 + Exhibits, 104

<sup>&</sup>lt;sup>3</sup> "BP Deepwater Horizon costs balloon to \$65 billion." Reuters. January 16, 2018. https://www.reuters.com/article/us-bp-deepwaterhorizon/bp-deepwater-horizon-costs-balloon-to-65-billion-idUSKBN1F50NL

<sup>&</sup>lt;sup>4</sup> "Transocean Agrees to Plead Guilty to Environmental Crime and Enter Civil Settlement to Resolve U.S. Clean Water Act Penalty Claims from Deepwater Horizon Incident." U.S. Department of Justice Office of Public Affairs, January 3, 2013. https://www.justice.gov/opa/pr/transocean-agrees-plead-guilty-environmental-crime-and-enter-civil-settlement-resolve-us

believed that was an XPO facility." This is not necessarily true. Baltagi evidently gave Hodgson the misleading impression that XPO controlled that warehouse, regardless of whose name was on the sign in front of the building. (Hodgson Volume 1 + Exhibitis, 113)

Distribution centers have become much more varied and complex since the old days of "warehousing," to the point where many activities such as kitting, assembly, and packaging may be handled by subcontractors and independent workers, who may work inside a facility labeled with another name, adjacent to it, or located nearby.

Therefore, I would not be surprised to see another name on the sign, especially if my tour guide explained that they were a subcontractor.

### 3.2.4 The warehouse distinction is an intentional distraction from the main issue of fraud.

This argument about whether or not XPO was technically responsible for warehousing is an example of Sabino's analysis distracting from the main issue, which is that Baltagi, and by extension XPO, committed fraud. Sabino's reliance on technicalities of paperwork (was it produced from a warehouse management system?) and operations (would the warehouse manager have signed a specific document?) obfuscates the relatively clear case of fraud against Baltagi.

# 3.3 The Documents Were Authorized by XPO Since They Were Acknowledged by a Bonafide XPO Employee Through an Official XPO Email Account.

Sabino seems to argue, in points 1b, 1c, 2a, 5, 14, and 18, that Baltagi was a rogue criminal who produced and/or transmitted falsified documents on his own, outside of XPO's control. However, he was a bonafide XPO employee, he DID produce, convey, and/or facilitate the conveyance of such falsified documents, and he used his XPO company email address to do so, which means that he operated within the parameters of XPO's systems, procedures, and infrastructure, which were free-wheeling enough to permit him do that.

# **3.4** Disputed Ownership of Cargo is Highly Unusual and Should Have Triggered a Security Audit.

Sabino claims that "it is not uncommon nor unexpected for a freight forwarder to have competing ownership claims on goods." This is wrong.

Most logistics operations measure Loss & Damage (L&D), which consists principally of cargo that is damaged in-transit and shrinkage. Shrinkage, which is loss during storage, mostly arises from obsolescence or decay while in storage, and may include a tiny amount of petty theft.

Competing claims of ownership of cargo is unusual for well-run companies. FedEx's Loss &

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Damage guide does not include any information regarding competing cargo claims,<sup>5</sup> and it's not in the top 4 types of freight claims,<sup>6</sup> which are, according to one source 1) External damage, 2) Loss, 3) Shortage, and 4) Internal damage.

The fact that there was not *one* set of competing claims, but *four* – Baltagi was holding the same tires for *four* companies (Kirby, Vecron, GSL, and Origin Mining), based on my understanding – makes it extraordinarily unusual, and should have triggered a security audit.

## 3.5 A Security Audit Would Probably Have Uncovered the Fraud.

Sabino also says that audits would not have uncovered the fraud. He says that audits don't include reviewing employee emails, but there is no single definition of an audit. Audits can take many forms, shapes, and sizes. When fraud is suspected, audits can include all kinds of surveillance.

At the simplest level, an audit could involve the typical activities of XPO's Monthly Operating Review, which focus on Key Performance Indicators that represent commercial and operating performance. This type of audit would not have uncovered the fraud.

At the next level, an audit could dig into the details underlying those indicators, such as account-by-account analysis of delivery performance, customer satisfaction, revenues, profitability, and receivables. This type of audit may not have uncovered the fraud, even though there were overdue receivables from Midwest Mining which would have been analyzed.

When security is compromised, a security audit is warranted. Some logistics security firms specialize in undercover surveillance of shipping, warehousing, and customs clearance operations to catch thieves and other malicious actors by deploying an extremely wide range of low-tech and high-tech approaches. My company has dealt with several of these security companies over the years, and I am aware of various passive and active spying software, physical policing, and intensive background checking options for conducting audits triggered by suspicious behavior.

The May 13, 2016 letter from Star Funding to Brad Jacobs (Muzi, Dominic (8-12-19), 902), which provided very specific details of irregularities among at least four named XPO managers and accused XPO of a "cover up" should have triggered a security audit.

A rigorous audit consisting of in-depth one-on-one interviews with the XPO employees and customers concerned, surveillance of the named individuals emails, and a physical audit of the tires – which was eventually done 19 months later by SDI (Shook, Max (8-22-2019), 490) would have revealed the fact that the same tires were pledged to multiple customers and lenders, which would have led to discussions with those customers and lenders which would

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<sup>&</sup>lt;sup>5</sup> Guide to Loss and Damage Claims. FedEx.

 $http://images.fedex.com/us/freight/pdf/Guide\_to\_Loss\_and\_Damage\_Claims.pdf$ 

<sup>&</sup>lt;sup>6</sup> The 4 Most Common Freight Claims Submitted by Shippers. Redwood. https://www.redwoodlogistics.com/the-4-most-common-freight-claims-submitted-by-shippers/

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have uncovered the falsified documents and consequently their origins. In addition, a logistics security firm or private detective may have uncovered the nine payments made by Adkins to Baltagi and his wife through 2016 and January of 2017.

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# 4 Appendix: Summary Biography of David Steven Jacoby

David Steven Jacoby, MBA, CFPIM, CSCP, CIRM, CPM, CTL

David Jacoby has been consulting for over 30 years in supply chain management, operations strategy and performance improvement. He wrote Guide to Supply Chain Management (The Economist, 2009) and multiple other supply chain books for major publishers, and has contributed over 300 speeches, articles and webcasts to publications including the Supply Chain Management Review and Supply Chain Quarterly.

His relevant experience includes the following projects and roles:

- Evaluated international growth strategies, including freight forwarding truckload, and less-then-truckload carrier segments, and whether or not to enter new LTL markets in Europe.
- Deployed routing technology and standardized work methods & standards, storage & shuttle configurations, and organization and compensation structures for a less than truckload service provider.
- Developed valuation models and scenarios during due-diligence for a multimodal (rail/ocean) merger.
- Led a Benchmarking Center of Excellence for A.T. Kearney. Conducted dozens of benchmarking projects for equipment, parts and component distribution in automotive, medical, electronics, and other diverse industries.
- Overhauled logistics at a retailer with regional operations, in a two-year project that graduated from a pilot program through an implementation program.
- Led several process improvement teams during a multi-year effort at a multinational vehicle manufacturer, with sequential consulting projects in Europe, Latin America, and the US.
- Established a growth strategy and initiated partnership meetings between a consumer products company and international 3PLs.

He has taught graduate school Operations Management at Boston University and consulted at several global consultancies, including Kearney, Norbridge, and Temple, Barker & Sloane.

He holds an MBA from the Wharton School, a Masters in International Business from the University of Pennsylvania's Lauder Institute and a Bachelor of Science in Finance and Economics from the University of Pennsylvania, where he did coursework at the Université de Compiègne (France) and Delft Institute of Technology (Netherlands). He is also a Certified Fellow in Production and Inventory Management (CFPIM), Certified in Supply Chain Management (CSCP), Certified in Integrated Resource Management (CIRM), Certified in Purchasing Management (Lifetime C.P.M.), and Certified in Transportation and Logistics (CTL). At the International Supply Chain Education Alliance (ISCEA), he is a member of its Ptak Prize Selection Committee.

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# 5 Appendix: Resume of David Jacoby

### Work Experience

**Boston Strategies International (BSI), Inc.**, **President, 1998 – present,** a consultancy that provides digital solutions and outsourced services to make supply chains more innovative, agile, resilient, secure, sustainable, and customizable. Built a sales and project delivery network encompassing international partners in a dozen countries, plus nearly two dozen channel partners and technical specialists. Project examples include:

- Developed a methodology to help the US Department of Transportation account for supply chain benefits of large-scale infrastructure projects. By using the 'supply chain benefits' method, the US will be on a path to approve 156% more capex for large-scale projects over the next 23 years.
- Evaluated international growth strategies for one of the world's largest integrated transportation carriers, specifically the decisions whether to enter new freight and LTL markets.
- Led a team that redesigned the logistics network and the procedures for distribution and warehousing of maintenance and repair parts to 260 sites belonging to the New York City Housing Authority.
- Led a team that identified 'hard' savings for the largest company in the world throughout a six-year supply chain analysis program. Benefits included a 7% reduction in capital expenditures, 1% lower operating costs, a 61% throughput increase through improvements in productivity and reductions in lead time for critical equipment, and 2% lower inventory carrying costs due to lead time reductions.
- Led a team that saved 13% on a \$45 billion capital project for a European company by designing a master supply chain strategy and procurement plan.
- Economist, Contributing Editor (while consulting at BSI). Researched, conducted surveys, and wrote 11 custom 'thought leadership' papers on supply chain related topics for SAP, Microsoft, Cisco, and other clients. Presented results at international conferences. Titles included, for example: The New Face of Purchasing; RFID Comes of Age; Chinese Third-Party Logistics Market Analysis and Forecast; and Unleashing the Power of Customer Data.
- Boston University, Lecturer, Graduate School of Management, Department of
  Operations Management (while consulting at BSI). Taught 35 graduate students per
  semester using a combination of case studies, lectures, and exercises. Topics included,
  for example: constraints management, statistical process control, quality management
  and Six Sigma, inventory and just-in-time, mass customization, service operations
  management, and supply chain strategy.

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Norbridge Inc., Principal, Transport & Logistics, 1996 – 1998 (Concord, MA). Helped global rail and intermodal carriers, auto manufacturers, distributors and logistics service providers improve operations (e.g., purchasing, manufacturing, transportation, and maintenance) through benchmarking, demand forecasting, process redesign, planning and scheduling, materials management, and equipment/infrastructure planning. Clients included companies such as FedEx, Chrysler, and CSX. Promoted from Senior Associate.

- Supported operational integration with competitive analyses and capacity strategies for the intermodal, merchandise, and bulk businesses during four phases of a \$10 billion rail merger.
- Managed numerous multi-party benchmarking and best practices studies, including two that involved an annual parts logistics conference.

A.T. Kearney Inc., Manager, Procurement Logistics and Supply Chain, 1989 – 1996 (based in New York, Chicago [two years], Paris [two years], Brazil [two years] and Atlanta, with project work in Eastern Europe and Asia. Served clients such as BASF, New Zealand Rail, France Telecom, Kowloon-Canton Railway, GM, Kraft, and Monoprix. Managed engagements in strategic sourcing, transportation, logistics/supply chain optimization, maintenance management, outsourcing and business transformation (reengineering), M&A, privatization, competitive intelligence, and marketing strategy. Led a Benchmarking Center of Excellence. Promoted from Associate. Featured projects include:

- Designed and implemented a major global sourcing program for vehicle makers in Brazil that saved 20% through a multi-year engagement that was conducted entirely in Portuguese. Also re-engineered the order fulfillment process of CKD (completely-knocked-down) trucks, reducing lead time by 30% and cost by 35% for the activities in scope.
- Assessed the business strategy, base case, forecast scenarios, and valued an Australasian railway, paving the way for its \$328 million sale.
- Evaluated the financial viability of five multi-billion dollar capital projects for a Chinese freight logistics and passenger rail and ferry company, resulting in the decision to build a container train service, a harbor tunnel, and a high-volume strategically important switching yard.
- Built a case that helped a Canadian railroad successfully secure government approvals to build a cross-border double-stack freight rail tunnel by demonstrating that the construction and the ongoing operations would generate hundreds of jobs, and comparing that to a 'do-nothing' scenario, in which traffic flows and terminal utilization would create congestion and traffic delays.
- Co-managed a Benchmarking Center of Excellence that provided the basis for consulting projects that reduced costs and improved performance of hundreds of European companies in logistics, finance, manufacturing and maintenance.

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- Analyzed transportation rates and identified savings opportunities for chemicals, forest products, and food products shippers. Prepared workshops on negotiating with suppliers.
- Implemented a redesigned store logistics process, improving cash-flow and decreasing stockouts and markdowns for a French retail chain. Conducted a series of detailed pilot programs.

<u>World Bank</u>, Junior Economist (Consultant), 1985 (Tunis). Analyzed domestic resource cost of seven agricultural commodities in (potatoes, oranges, olives, dates, hard wheat, soft wheat, and barley). Follow-on mission based on a successful USAID project in the same ministry. The work, which was conducted entirely in French, presaged a major wave of free-market reforms.

Mercer Management Consulting Inc., Research Associate, International Trade Group, Research Associate, 1985 – 1987 (Lexington, MA, currently Oliver Wyman). Developed business and investment strategies, economic analyses, and decision support tools for maritime clients such as APL and Sea-Land, and a large number of ports. Also participated in World Bankfunded projects for the governments of Benin and Burundi.

- Architected and built key elements of a computer-based World Trade Forecasting Service that was subsequently sold to an econometric forecasting firm.
- Developed valuation models and scenarios during due-diligence for a ground-breaking multimodal merger.

### Education

- MBA, Wharton School, University of Pennsylvania, Strategic Planning and Marketing, 1989.
- Master of Arts, <u>The Lauder Institute</u> of International Studies, University of Pennsylvania, 1989.
- Bachelor of Science (Economics), <u>University of Pennsylvania</u>. Finance and International Business, 1985. Courses at <u>Université de Compiègne</u> and <u>Delft Institute of Technology</u> and internships at Ford France S.A. and Frans Swarttouw B.V. (Netherlands).
- Certified Fellow in Production and Inventory Management (CFPIM)
- Certified in Supply Chain Management (<u>CSCP</u>)
- Certified in Integrated Resource Management (CIRM)
- Certified in Purchasing Management (Lifetime <u>C.P.M.</u>)
- Certified in Transportation and Logistics (CTL)

### Certifications and Affiliations

Past President, Boston <u>APICS</u>. Past President, New England Roundtable of the Council of Supply Chain Management Professionals (<u>CSCMP</u>). Member, Institute for Supply Management (<u>ISM</u>) and American Society of Transportation and Logistics (<u>AST&L</u>, now part of the

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Association for Supply Chain Management). Member of the <u>Ptak Prize</u> Selection Committee, <u>International Supply Chain Education Alliance</u> (ISCEA).

### Languages

English (native), French (fluent), Portuguese (proficient).

### **Publications and Interviews**

Note: Hyperlinks are provided to facilitate drill-down, however some older links may no longer be functional if the source file location has changed or been deleted.

### **SELECTED BOOKS**

Guide to Supply Chain Management, The Economist Books (2009)
Optimal Supply Chain Management in Oil, Gas and Power Generation (PennWell, 2012)
Reinventing the Energy Value Chain: Supply Chain Roadmaps for Digital Oilfields through
Hydrogen Fuel Cells (PennWell, 2021)

### **SELECTED OTHER PUBLICATIONS**

May 2019: <u>"Supply Chain Security Guidelines on Provenance."</u> For North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Supply Chain Working Group (SCWG).

April 2016: "Ofrecen Ahorros en Proyectos Energéticos." Interview of David Jacoby in El Norte Magazine, Mexico City.

April 2016: ""BSI offers \$2 Billion Savings in Energy Projects." Interview of David Jacoby in Negocioselnorte and Negocios Magazines, Mexico City.

January 2014: "<u>Traffic Jam: Is Your Supply Chain Ready for the Global Infrastructure Crisis?</u>" Interview of David Jacoby in APICS Advantage Magazine.

October 2013: "<u>Strategies for Managing Customer and Supplier Risks</u>," Interview of David Jacoby. Economist Intelligence Unit. Sponsored by Dun & Bradstreet.

January 2012. "<u>Rate Outlook.</u>" Presentation for the major annual multimodal "panel of experts" webcast, produced and sponsored by <u>Logistics Management magazine</u>.

November 2012: Major Accident Prevention and Lessons Learned in Oil & Gas: Four Guidelines and Thirteen Best Practices for Governing Safe Supply Chains, <u>Abu Dhabi International</u> <u>Petroleum Exhibition and Conference</u> (ADIPEC).

September 2012: Optimal Supply Chain Management in Oil, Gas and Power Generation, PennWell.

August 2012: SCMR Exclusive Interview with David Jacoby on the State of the Ocean Cargo Market

June 2012: GE Oil & Gas Newsletter - " Bridging from Thermal to Renewable Power Supply Chains"

March 2012: Energy Tribune article on Tumaco Pipeline

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March 2011: Registering and Transporting Hazardous Substances, Offshore Technology

Conference

February 2011: 2011 Intermodal Freight Rate Outlook for Trades to and from North America,

Logistics Digest

December 2010: Planning Your Carbon Footprint, Bangkok Logistics Digest

November 2010: Get Off Your Diagonal, Bangkok Logistics Digest

October 2010: Petroleum Pride: Winners of BSI's 2010 Oil and Gas Supply Chain Awards,

LOGae

September 2010: 10 Tips for Choosing a Carrier or 3PL, Parcel Magazine

September 2010: Leading Supply Chain Transformations with Credibility

August 2010: Green Supply Chains by 2020

July 2010: 2010 Mid-Year Rate Outlook: Paying a Premium, Logistics Management

July 2010: The Return of PPP

May 2010: Too Small to Fail: A New Model for Regulatory Oversight

April/May 2010: The Outlook for Motors and Drives in 2010: Strategies for Success, e-Drive

April 2010: Planning for the Long Haul

March 2010: The Oil Price 'Bullwhip': Problem, Cost, Response, Oil & Gas Journal

March 2010: Supplier Development: More Than a Good Idea

February 2010: Oil Price Volatility and How to Avoid It, Energy Tribune.

February 2010: Recognizing Excellence: BSI Supply Chain Award Winners

February 2010: Using Flexible Capacity Techniques to Thrive in a Volatile Economy

January 2010: 2010 Rate Outlook Update, Logistics Management Magazine.

January 2010: W-Shaped Economy or Long Wave?

December 2009: Guide to Supply Chain Management, The Economist and Profile Books

December 2009: Supply Chain Report Card, LOG Middle East

November 2009: Contracting in Volatile Markets

October 2009: Career Advice for Young Professionals

September 2009: Capacity Concerns Could Be The Next Chemicals Supply Challenge,

Purchasing Magazine

September 2009: Your Supply Chain Costs Have Decreased by 12%

August 2009: Good, Better, Best. Supply Chain Excellence Awards

July 2009: The Bullwhip Effect in Global Trade - This is One Wild Bull

June 2009: The New Era of Post-Chinese Sourcing

June 2009: Energy Outlook, ISM Material Management News

May 2009: What's Your Middle East Strategy?

April 2009: The Ocean Market: Overcapacity Until 2012

February 2009: Send an RFO Today

January 2009: Window of Opportunity: 2009 Logistics Rate Outlook, Logistics Management (by

John Quinn with contributions by Boston Strategies International).

December 2008: Infrastructure Investment: The Supply Chain Connection, CSCMP Supply

Chain Quarterly.

December 2008: How should the global financial crisis affect your freight strategy?

November 2008: Technological Innovations in Logistics and the Extended Supply Chain

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October 2008: Intermodal Integration – Responding to Market Needs

September 2008: <u>RFID Solutions</u>
August 2008: <u>Air Express Solutions</u>

August 2008: Global Logistics – Ups and Downs, APICS e-news.

July 2008: Paperless Management Solutions

July 2008: 2008 Mid-Year Rate Outlook Update, Logistics Management Magazine.

June 2008: The Elusive Global Transportation Solution

May 2008: How Long Will the East-West Trade Imbalance Last? PARCEL Magazine.

May 2008: Can Western Manufacturers Beat the Competition? APICS Magazine.

May 2008: The Art of High-Cost Country Sourcing, Supply Chain Management Review.

May 2008: Fleet Management Solutions

April 2008: Logistics Outsourcing – It's Not About Reducing Costs

March 2008: "Shippers Compliance in Freight Transportation & Logistics" (Governance, Risk, and Compliance Handbook)

March 2008: "Carriers Compliance in Freight Transportation & Logistics" (Governance, Risk, and Compliance Handbook)

March 2008: The Shanghai Connection, World Trade Magazine.

March 2008: Visibility and the Role of Government in Container Security

February 2008: <u>RFID – The Solution to Better Baggage Handling</u>, Ground Handling International.

February 2008: Chemicals Markets Getting More Complex, Purchasing Magazine.

February 2008: Perfecting Your Supply Chain, PARCEL Magazine.

February 2008: Best Solutions in Supply Chain Management

January 2008: 2008 Logistics Rate Outlook, Logistics Management Magazine.

November 2007: Going Global – The Key is People, PARCEL Magazine.

March 2007: Variable Energy Costs and Strategic Sourcing, World Trade Magazine.

*November 28, 2007:* Intermodal, Infrastructure Investment and Financing, <u>Transport Events</u>, <u>3rd Trans Middle East Exhibition</u>, InterContinental Citystars, Cairo, Egypt.

November 13, 2007: RFID's Impact on Privacy and Security, CILIP, RFID in Libaries

Conference via live video link, QEII Conference Center, Westminster, London.

October 31, 2007: Management: Latest Developments in Supply Chain and Global Logistics Industry, Parcel Magazine, Parcel Shipping and Distribution Forum, Hyatt Regency O'Hare, Chicago IL.

October 23, 2007: Dubai and the Changing Face of Middle East Logistics, a webinar

October 23, 2007: Energy Prices and the Supply Chain: The Outlook of Fuel Surcharges,

<u>Institute of Supply Chain Management (ISM)</u>, <u>NAPM Twin Cities Fall Conference</u>, Minneapolis Marriott Airport Hotel, Bloomington, MN.

*March 23*, 2007: The Asian Sourcing Boom: How Long Will it Last, a summary of Boston Strategies International's third annual State of Strategic Sourcing Study.

March 29, 2006: Supply Chain Benefits of Transportation Infrastructure Improvements,

Transportation Research Board (TRB), Conference on Transportation and Economic

Development (TED 2006), Little Rock AK

March 1, 2006: "Radio Frequency Identification (RFID) Comes of Age," Dallas, TX

June 2005: <u>Measuring Sourcing Performance: What's the Mystery?</u> Purchasing Magazine.

May 2005: Swagging the Biggest Decisions You Make, Purchasing Magazine.

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March 2005: Mitigating High Raw Material Prices, Purchasing Magazine.

February 2005: Focus on the Right Suppliers, Purchasing Magazine.

February 2005: Mega-Sourcing – Do You Have the Skills? Purchasing Magazine.

January 2005: The New Economics of Partnering, Purchasing Magazine.

July 2005. "Strategic Sourcing: Getting Maximum Points from Game Plan Variety," APICS Magazine.

2005. "Business 2010: Retailing Embracing the Challenge of Change," Economist Intelligence Unit

May 2005. "The New Face of Purchasing," Economist Intelligence Unit.

March 2005. "High-Impact Sourcing," Survey Feedback Report.

January 2005. "Strategic Sourcing Impact Study," Inside Supply Management.

August 19, 2004. "Demand to Fill Top Slots With Absolute Top Performers," C-Speak.

April 8, 2004. "Developing Skills for the Era of Mega-Sourcing," HR Executive.

March 2004. "What's Next in the Procurement Arena," APICS Performance Advantage.

### **Selected Presentations**

September 29, 2020: The Future of Supply Chain Management, IIM Ranchi, Ranchi, Jharkhand, India.

May 11, 2020: Supply Chain Security Guidelines on Provenance. North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Meeting. March 30, 2020: Achieving Breakthrough Success in the Battery Value Chain. International Battery Partnering & Investment Forum. Orlando.

December 3, 2019: Investing in Energy Innovators. Bank of Montreal – Boston Growth Conference.

October 19, 2019: Confronting Climate Change (Moderator). Lauder Institute Tri-Annual Global Reunion. New York.

June 24, 2019: Achieving Breakthrough Success in the Battery Value Chain. Advanced Automotive Battery Conference. San Diego.

June 4, 2019: Supply Chain Security Guidelines on Provenance. North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Committee (CIPC) Supply Chain Working Group (SCWG). Orlando, Florida.

April 24, 2019: Economics of Offshore Wind in and Around New York. New York Energy Week Meet-Up, New York.

December 2018: Debate: Top 10 Reasons for Tariffs. APICS North Shore, Burlington MA. October 2018: "Tariffs, Trade Wars, and Your Global Supply Chain." New England Supply Chain Conference and Exhibition. Marlborough, MA.

September 2018: "Shifting Business Models in the Power Industry." Institute for Supply Management's Utility Purchasing Management Group. Scottsdale, Arizona.

June 2018: "Changing Business Models in the Power Industry." Electrify Europe conference (formerly PowerGen, by PennWell). Vienna, Austria.

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June 2018: "Navigating the Landscape of Structuring Partnership Agreements." Presentation to the 18th Annual Advanced Automotive Battery Conference, San Diego.

May 2018: "Leadership in Global Financial Markets." Panel Discussion moderated by Mauro Guillen, Director of The Lauder Institute and Dr. Felix Zandman Professor of International Management at the Wharton School, with co-panelists Laxman Narasimhan WG'93, CEO, Latin America and Europe Sub-Saharan Africa PepsiCo, Inc., and Michelle Tien WG'03, COO, Credit Suisse.

October 2017: Comparative Economics of Combined Cycle, Solar, Wind, Hydro, and Geothermal Power. University of Calgary, Haskayne School of Business, Calgary, Alberta, Canada.

October 2016: The Impact of Energy Prices on Logistics & the Global Supply Chain.

Marlborough, MA, 2016 New England Supply Chain Conference & Exhibition

May 2016: "Global Strategic Capital Project Management and Supply Chain Management in Oil and Gas Depression." Keynote Presentation and related Workshop, China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2016: "Hydrocarbons Infrastructure in Mexico." Moderator of a Panel Discussion. Second Mexico Gas Summit. San Antonio, USA. Produced by Industry Exchange LLC.

June 2015: "Negotiating Skills for Deals That Benefit All Parties." Workshop at the 3rd Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry." GFMI. Houston, USA.

May 2014: "Negotiating Production Sharing Agreements (PSAs) and Joint Operating Agreements (JOAs)". Workshop at 2nd Annual Contract Risk Management Forum for Oil & Gas. Sponsored by TBM Evolution. Berlin, Germany.

May 2014: "Navigating and Optimizing the Supplier Certification Process at National and International Oil Companies." Workshop at China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2014: "Pipeline and Oilfield Security Technologies: Global Benchmarks and State of the Art." Workshop at the Fifth Colombia Oil & Gas Conference and Exhibition. Bogota, Colombia.

May 2013: "Optimal Supply Chain Management: The Global Supply Opportunity." Speech to the China Sourcing Summit on Petroleum Equipment (CSSOPE), Beijing, China.

April 2013. "Risk Management in Oil & Gas," Procurement and Supply Chain Management Forum for Oil & Gas, produced by TBM Evolution, Berlin, Germany.

November 2012: Major Accident Prevention and Lessons Learned in Oil & Gas: Four Guidelines and Thirteen Best Practices for Governing Safe Supply Chains, <u>Abu Dhabi International</u> Petroleum Exhibition and Conference (ADIPEC).

October 18, 2012. Boston, Presentation to the Society of Petroleum Engineers' New York and New England Petroleum Section, Massachusetts Institute of Technology (MIT). "Safe Supply Chain Design."

September 24-26th, 2012, London, Strategic Sourcing Workshop at 6th Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry.

January 25th, 2012, Rate Outlook Webcast, Logistics Management Magazine.

October 24, 2011. "BRIC Plus: Uncovering Economic and Supply Chain Success in the New Emerging Economies," 2011 APICS International Conference & Expo, Pittsburgh, Pennsylvania.

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September 26-28, 2011. <u>5th Annual Global Procurement and Supply Chain Management for the Oil and Gas Industry conference</u>, Barcelona, Spain.

May 4, 2011. "Global Trade Restrictions and Related Compliance Issues Pertaining to Oil and Gas Production Chemicals," Offshore Technology Conference (OTC), Houston Texas.

January 27, 2011. "2011 Logistics Rate Outlook," Logistics Management webcast.

October 10, 2010: TransOman Transport, Shipping, and Logistics Show, Muscat, Oman.

October 5, 2010: "Protecting and Enhancing Energy Infrastructure Projects in the Middle East – Mitigating Project Risk and Safeguarding Investments, PowerGen Middle East, Doha, Qatar.

September 20, 2010: "Value-Based Pricing in the Oil and Gas Supply Chain," <u>The OFS Portal</u> LLC 8th Annual Fall Retreat, Houston, TX (USA).

June 16, 2010: "Success Stories in Supplier Development," APICS South Shore Chapter, Taunton, Massachusetts.

June 15, 2010: "Basics of Supply Chain Risk," APICS Providence Chapter, Providence, Rhode Island.

May 26, 2010: "<u>Future Management Organization for Mediterranean Ports and the Maritime Sector</u>," 8th Mediterranean Logistics and Transport Forum, Barcelona, SPAIN. Click <u>here</u> to see a copy of the presentation speech.

May 18, 2010: "Sourcing 2010 and Beyond," Round Table on Sourcing, Boston APICS Dinner Meeting, Waltham, Massachusetts. Click <a href="here">here</a> to see an excerpt of the presentation slides.

May 18, 2010: "Supply Chain Roundtable on Sourcing," APICS Chapter Events, Waltham, Massachusetts.

April 22, 2010: "Rails, Roads, Water and Air: Logistics, Inventory and Distribution," Live Television Panel Discussion, Institute for Supply Management, Phoenix AZ.

January 28-29, 2010: "<u>Economic Outlook and Strategies for Success</u>," Motor, Drives & Automation Systems 2010, Orlando, Florida. Click <u>here</u> to see an excerpt of the presentation slides.

January 28, 2010: "2010 Logistics Rate Outlook," Webcast, 2pm Eastern.

January 20, 2010: "Managing Procurement for Total Supply Chain Value," Purchasing Managers Association of Boston (PMAB), Executive Roundtable, Concord, Massachusetts.

November 24, 2009: "Supply Chain: What's it Worth?," Fifth Trans Middle East Conference and Exhibition, Bahrain. Click <a href="here">here</a> to see an excerpt of the presentation slides. Click <a href="here">here</a> to see photos from the conference.

October 27, 2009: "Supply Chain: The New Revenue Generator," The Next Generation Supply Chain, Virtual Conference sponsored by the Supply Chain Management Review.

October 18, 2009: "Realizing Supply Chain Value through Smart Freight Management," Supply Chain Management Forum, Dubai.

October 12, 2009: "<u>Deriving Value from Supply Chain Innovation in Troubled Economic Times</u>," The Health and Personal Care Logistics Conference, Longboat Key, Florida. Click <u>here</u> to see an excerpt of the presentation slides.

October 7, 2009: "Winning Supply Chain Strategies and Financial Benchmarks," APICS New York City Chapter, New York City.

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October 7, 2009: "The New Global Supply Chain," Council of Supply Chain Management Professionals' Manhattan Roundtable, New York City. Click <a href="here">here</a> to see an excerpt of the presentation slides.

April 4-6, 2009: Keynote Presentation, Supply Chain Management: Realizing the Potential, Third Annual Supply Chain Management Symposium, Hotel Meridien, Khobar, Saudi Arabia. April 4-6, 2009: Eliminating the Bullwhip Effect by Synchronizing Supply Chains, Third Annual Supply Chain Management Symposium, Hotel Meridien, Khobar, Saudi Arabia. Click here to see a photo from the symposium.

January 29, 2009: Panel of Experts Webcast, 2009 Rate Outlook, Logistics Management Magazine.

January 20, 2009: International Sourcing and Cross-Border Logistics, <u>APICS</u>, Boston, MA November 23-25, 2008: Supply Chain — From Concept to Cash, <u>Transport Events</u>, <u>4th Trans Middle East</u>, Dubai, UAE. <u>Click here to see photos from the conference</u>.

*October 6, 2008:* Global Logistics — Hot Spots and Major Developments, New England Supply Chain Conference & Exhibition 2008, Marlboro, MA.

September 24-26, 2008: Supply Chain Organization Development, Southwest Supply Management Conference, Institute for Supply Management (ISM), Dallas, TX.

September 24-26, 2008: Keynote Presentation, Strategically Sourcing Transportation:

Competition vs. Cooperation, Southwest Supply Management Conference, <u>Institute for Supply Management (ISM)</u>, Dallas, TX.

September 17-18, 2008: Ports Can Increase Margins Through End-to-End Supply Chain Brilliance, PorTech Asia 2008, Tianjin, China.

September 14-16, 2008: Global Logistics: The Next Generation, 2008 APICS International Conference and Expo, Kansas City, Missouri.

September 9, 2008: <u>Business Forecasting and Planning Excellence Conference</u>, Las Vegas, Nevada. (Chairperson)

July 22, 2008: 2008 Mid-Year Rate Outlook—Uncertainty Persists, 2008 Mid-Year Rate Outlook Webcast, Logistics Management Magazine.

*June 5-6, 2008:* Global Economic Trends and Development in Containerised Trade Growth, Transport Events, 6<sup>th</sup> ASEAN Ports and Shipping 2008, Ho Chi Minh City, Vietnam.

*March 25, 2008:* RFID in Ground Handling, Transport IQ (<u>IQPC</u>), <u>Ground Handling Excellence in Passenger Services Conference</u>, Kuala Lumpur, Malaysia.

March 20, 2008: Supply Chain Strategy, a webinar.

March 6, 2008: Logistics In Gioia Tauro, a webinar.

March 6, 2008: Supply Chain Organization Development, a webinar.

*March* 6, 2008: RFID and Security, <u>International Air Transport Association (IATA)</u>, <u>World Cargo Symposium</u>, Rome, Italy.

February 21, 2008: Logistics In Seattle, a webinar.

*January 30, 2008*: 2008 Rate OutlookUncertainty Abounds, <u>2008 Logistics Rate Outlook Webcast</u>, <u>Logistics Management Magazine</u>.

January 30, 2008: How Will Western Manufacturers Survive?, a webinar.

January 8, 2008: Logistics in New York, a webinar.

December 13, 2007: Logistics in Shanghai – Along the Yangtse, a webinar.

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*November 28, 2007:* Intermodal, Infrastructure Investment and Financing, <u>Transport Events</u>, <u>3rd Trans Middle East Exhibition</u>, InterContinental Citystars, Cairo, Egypt.

November 26, 2007: Logistics in Cairo-Through the Suez Canal, a webinar.

November 19, 2007: Supply Risk Management, a webinar.

November 13, 2007: RFID's Impact on Privacy and Security, CILIP, RFID in Libraries

Conference via live video link, QEII Conference Center, Westminster, London.

*October 31, 2007:* Management: Latest Developments in Supply Chain and Global Logistics Industry, <u>PARCEL Magazine</u>, Parcel Shipping and Distribution Forum, Hyatt Regency O'Hare, Chicago IL.

October 23, 2007: Dubai and the Changing Face of Middle East Logistics, a webinar

October 23, 2007: Energy Prices and the Supply Chain: The Outlook of Fuel Surcharges,

<u>Institute of Supply Chain Management (ISM)</u>, <u>NAPM Twin Cities Fall Conference</u>, Minneapolis Marriott Airport Hotel, Bloomington, MN.

September 27, 2007: Multimodal Synergy – Integrated Capability in Logistics and

Transportation, <u>Transport Events</u>, <u>4<sup>th</sup> Thai Ports and Shipping Exhibition and Conference</u>, <u>Imperial Ouern's Park Hotal Bangkok</u>, <u>Thailand</u>

Imperial Queen's Park Hotel, Bangkok, Thailand.

September 27, 2007: Energy Prices and the Supply Chain: Charting a New Course, <u>IPC</u>, <u>Midwest Manufacturing Conference and Exhibition</u>, Donald E. Stevens Convetion Center, Rosemont, IL.

September 18, 2007: Is there ROI in RFID? a webinar

August 21, 2007: Benchmarking Your Supply Chain Savings, a webinar

August 7, 2007: Energy Prices Reshaping the Supply Chain, a webinar

July 23, 2007: Budgeting for Volatility, a webinar

June 4, 2007: Sourcing from China, Journal of Commerce, 3rd Annual China Trade & Logistics

Conference, Savannah International Trade and Convention Center, Savannah GA.

*April 25-27, 2007:* Budgeting and Forecasting in a Highly Volatile Environment, <u>Institute of Business Forecasting and Planning (IBF)</u>, <u>Demand Planning and Forecasting: Best Practices Conference 2007</u>, Loews New Orleans Hotel, New Orleans LA.

*March 23, 2007:* The Asian Sourcing Boom: How Long Will it Last, a summary of Boston Strategies International's third annual State of Strategic Sourcing Study.

March 21, 2007: Low-Cost Country Sourcing: Sweeping Up, National Association of

Purchasing Management Southern New Hampshire Chapter, Concord NH

March 5, 2007: Courting the Consumer: Creating Dynamic Brands in Retail and Consumer Goods, Vendor Compliance Federation Conference, Marco Island FL

*March 1, 2007:* The Impact of Low-Cost Country Sourcing on the Chemicals Supply Chain, Institute of Supply Chain Management (ISM) Conference, World Gold Village, Renaissance Hotel, St. Augustine FL.

February 16, 2007: Benchmarking Your Supply Chain Savings, a webinar

January 31, 2007: Logistics Outlook 2007 Webcast, Logistics Management Magazine.

*January 23, 2007:* Energy Prices Reshaping the Supply Chain: Charting a New Course?, Joint meeting of <u>APICS</u> Providence and <u>Purchasing Managers' Association of Rhode Island (PMARI)</u>, Warwick, RI.

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*January 11, 2007:* Global Trade and Technology: The Crossroads, <u>Beverly Chamber of Commerce</u>, Beverly MA

*January 8, 2007:* Data Explosion: Redefining Metrics, <u>Purchasing Managers Association of Boston</u>, Lexington MA

*November 27, 2006:* RFID: Revolutionizing Baggage Handling, <u>Ground Handling International</u> (GHI), 8<sup>th</sup> Annual Ground Handling International Conference, Monaco

*November 16, 2006:* Supply Market Intelligence: What is Your Supply Market IQ? <u>APICS</u> Fairfield County, Fairfield CT

*November 14, 2006:* Supply Market Intelligence: What You Don't Know Can Hurt You, Resources Global Professionals, Westford MA

October 25, 2006: RFID: Mining Mega-Data for Enhanced Forecast Accuracy, <u>Institute of Business Forecasting and Planning (IBF)</u>, <u>Demand Planning and Forecasting Conference 2006</u>, Orlando FL

October 18, 2006: Taking Smarter Risks by Forecasting Complex Supply Markets, APICS Princeton-Trenton-Monmouth-Ocean Chapter, Columbus NJ

October 12, 2006: Minimizing Risk by Forecasting Supply Markets, APICS Monadnock Chapter, Keene NH

October 2, 2006: Is there ROI in RFID?, Northeast Supply Chain Conference & Exhibition 2006, Marlborough MA

September 26, 2006: The Asian Sourcing Boom: How Long Will it Last?, <u>Distribution Business</u> Management Association Annual Conference, Las Vegas NV

September 14, 2006: What is Your Supply Market IQ?, Council of Supply Chain Management Professionals (CSCMP) NYCONN Roundtable, Dobbs Ferry NY

September 12, 2006: Supply Market Intelligence: What You Don't Know Can Hurt You, APICS North Shore, Woburn MA

*June 12*, 2006: Building a Secure Supply Chain with RFID, <u>Vendor Compliance Federation</u> Supply Chain Conference, Teaneck NJ.

May 17, 2006: "The Logistics of Global Outsourcing," APICS New Haven.

May 1, 2006: "The New Age of Purchasing," <u>Purchasing Managers Association of Boston</u> Top Management Night, Boston MA.

April 24, 2006: "Managing Supply Risk," client presentation in Dharan, Saudi Arabia.

March 29, 2006: Supply Chain Benefits of Transportation Infrastructure Improvements,

<u>Transportation Research Board (TRB)</u>, <u>Conference on Transportation and Economic</u> Development (TED 2006), Little Rock AK

March 1, 2006: "Radio Frequency Identification (RFID) Comes of Age," Dallas, TX February 28, 2006: "Creating Dynamic Brands in Retail/Consumer Goods," San Francisco CA January 19, 2006: "Designing Sourcing and Logistics for Flexibility and Innovation," Massachusetts Biotechnology Council, Boston Logan Airport

### References

### **Selection of endorsements from LinkedIn:**

June 25, 2021 Page 28 of 33

- "David Jacoby is one of the most knowledgeable supply chain professionals I have ever met! He had an amazing depth, in multiple facets of materials management, and had consistently contributed to the profession in many ways. It is always a pleasure dealing with Dave one of the best in the business!"
  - o Kenneth B. Glasser, CPIM, C.P.M., Global Sourcing Manager, Axcelis
- "David Jacoby is a brilliant consultant with outstanding analytical capabilities applied to a long term vision of what matters. I've known him for more than 20 years and have seen how he shaped his company to become what it is today, a remarkable company that delivers differentiating value to its customers. I strongly recommend him and his company."
  - o Christophe Poittevin, Software Sales Manager, IBM Software Group
- "David and his team at Boston Strategies did an outstanding job on our supply chain strategy project at NYCHA. Their research and recommendations were thorough and data-driven. David is an expert who never stops learning and a consummate professional who focuses on providing value for his clients and his profession. [He delivers] great results, expertise, and high integrity."
  - o Gary Smith CPIM, CSCP, Director of Supply Chain Operations, New York City Housing Authority
- "As a consultant to multinational companies on supply chain strategy and performance for over 20 years, David has the rare ability and creativity to make the complicated simple."
  - o St. Claire Gerald, CSCP, Former Director Supply Chain Management, Foot Locker
- "David is a supply chain management expert who combines top notch analytical skills with over two decades of global experience. His counsel has been invaluable and I highly recommend him."
  - o Charles Gamble, Senior Vice President-Client Services, Tangoe
- "David has the ability to analyze complex problems and present solutions in a clear, concise, practical manner. His primary research is excellent and he has consistently added a welcomed level of sophistication to the field of supply chain management. I am currently using his new book in university level courses and it has been well received by my students."
  - o Richard Weissman, Assistant Professor, Endicott College
- "I highly recommend David for his expertise in strategy development involving global markets. His firm can work across such a diverse array of industries and deliver an insight based on incredible research capabilities and current knowledge of market conditions."
  - o Jeffrey Kearns, Finance and Systems Manager at General Dynamics
- "David is a top-level consultant with an outstanding capacity of synthesizing the complexity of the SCM body of knowledge while at the same time offering original perspectives. He has the right mix of academic background and hands-on experience to get the job done!"
  - o Massimo Marchi, MBA, CSCP, CLSSS, Director of Supply Chain Planning and IT, Beretta

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- "David is a highly respected thought and practice leader in Supply chain management. He has consulted for over 20 years in Procurement, Transportation, Logistics, Manufacturing, Economics, and International Trade; and he is excellent at putting this acquired knowledge and functional experience to work solving complicated business issues. Having seen his work, heard his presentations, and read his white papers, I high recommend him and Boston Strategies in solving your business challenges and or in developing your Supply Chain Strategy."
  - o Greg Cornelius, CSCP, Director, Supply Chain Management, Haemonetics

Book Reviews of "Guide to Supply Chain Management"

### AS OF MARCH 1, 2012

- "I never really understood what supply chain management was until I read this book. It seemed to mean something different depending on who I was talking to. Now I get it."
- "I'm a university professor, and I am really impressed at how thorough the book is. From the preface to the glossary and the end notes, everything is well-documented, which makes the arguments and Jacoby's framework for supply chain management trustworthy and believable. Overall, the book is a credit to the Economist brand."
- "As a supply chain trainer and author, I am always pleased to read books that add to my knowledge and this book certainly made me stop and reflect many times = great! Let down slightly by the publishers small reproduction of the many charts and tables; overall however, this is a very good piece of work!"
- "The work sorts through some of the mythos about supply chain management and focuses on the core activities that add measurable value."
- "An excellent guide and, a must read not only for C-level managers but also for inclusion in curricula in business studies... brilliant in explaining the myths and realities of the various elements that are critical components of the supply chain."
- "If you are a novice to supply chain and often confused by conflicting definitions on what SCM is and is not read this book. If you are a supply chain practitioner and want some clear markers on designing a comprehensive supply chain strategy, read this book. David Jacoby's experience of over 20 years of strategic consulting on supply chain initiatives clearly comes through in this well-researched piece. The book very quickly jumps into the 4 key supply chain strategies cost rationalization, demand-supply synchronization, customization and innovation that organizations can pursue. And highlights early on the often forgotten point that while we can classify any function within an organizational silo, activities within them cannot be similarly silo-ed if we want to derive value. For instance, we often lump DC-Network design and an initiative such as cross-docking under the

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warehousing function. But how many of us look at the former activity through the lens of cost rationalization, and the latter as an enabler of synchronization? Insights, such as this, abound. The book frames the final few chapters with details on the organization structure, information systems framework and KPIs that must supplement each of these strategies. And that is when we truly comprehend the completeness of supply chain management. My only grouse is that the book went into too much of theory and detail toward the end. Maybe it was intentional, given the wide range of audience it aims to cater to. But if you can stifle some of those yawns and plough on, you will be enriched with a wealth of knowledge on how you must design, strategize, implement, measure and enhance your supply chain."

- "As a supply chain professional I found this book to be immensely helpful. It reduces important supply chain principles to quantifiable and applicable guidelines. A good read and a must for anyone looking to leverage value from your supply chain "
- "This is a great book that provides a concise yet thorough overview of supply chain management. It is educational and actionable filled with well-supported arguments and excellent, illustrative anecdotes. The book is not just for supply chain professionals. It is for any business person that wants to help take their company to the next level. Having read it and written notes in the margins, I will keep it nearby as a reference guide."
- "This book is very informative for anyone wanting to know more about supply chain management. The examples cited, as well as the charts are extremely helpful. I believe anyone can benefit from reading this book whether or not they have direct responsibility for supply chain activities."
- "This book describes very well the ins and outs of what the Supply Chain concept encompasses. It gives an excellent global understanding and is very rich of examples from real life situations. I warmly recommend its reading.
- "An essential tool for C-level management and their senior managers. It is clear, balanced in its objectivity and useful for achieving rapid results."
- "A strategic breath of fresh air for executives who are tired of tactical how-to books on supply chain management. It provides simple, logical guidance on how companies should think about the people, processes and infrastructure they put in place to enable the supply chains that will deliver their future.
- "A pragmatic approach for turning supply chain into a strategic differentiator, along with a treasure chest of examples showing how successful companies have done it."
- "A real-world look at how leading companies are putting supply chain management into practice for proven competitive advantage. This guide definitely belongs in your business library."

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### In-Depth Book Review of 'Guide to SCM'

David Jacoby. *Guide to Supply Chain Management: How Getting it Right Boosts Corporate Performance (The Economist)*. Bloomberg Press, 731 Lexington Avenue, New York, NY 10022. Sept 9, 2009. 262 pages. ISBN: 978-1-57660-345-1. US \$29.95.

First impressions can be very misleading. At a quick glance, *The Guide to Supply Chain Management* appears to be another book geared toward grabbing the eye of the CEO. But don't be deceived; this little book packs a significant punch! There is meat in this guide, presented in a straightforward organized way as an excellent reference for CEO and supply chain student as well. It is intended to get to the core of SCM by being clear, objective, relevant, and effective and includes numerous real world examples. In great measure, this book succeeds in solidly delivering on those goals.

The author matches years of experience with anecdotes, examples, and research derived from an impressive list of corporations, professional organizations, and academics. The book starts with a short history of SCM, highlighting the key problem of balancing supply and demand. Along the way, the author examines cost, security, legislative compliance, consumer safety, and environmental protection issues in making supply chain management the "hot topic" that it is today.

The focus of this guide though is on supply chain strategy. Supply chain strategy is an evolving and dynamic activity to which specific SCM tools, techniques, and metrics must be aligned. Even the organizational positioning of the supply chain function within the firm is critical to implementing a successful strategy. There is a clear distinction between supply chain management and supply chain strategy. Supply chain management provides customer benefit through increased efficiency, reliability, flexibility, and innovation. Supply chain strategy is all about putting these principles into action. Supply chain strategy flows from the business strategy and for successful firms, requires careful consideration.

This guide integrates that strategy through a framework containing four individual sequenced strategies – rationalisation, synchronisation, customisation, and innovation.

Rationalisation is the first strategy explored, focusing on low cost competition. Among the key elements discussed are strategic sourcing and outsourcing, lean manufacturing with all its familiar tenets, and product standardization and simplification. Consignment practices, vendor managed inventory, transportation mode selection, cross-docking, by-passing inventory tiers and equipment pooling are among the many other rationalisation techniques described in the text.

The follow-on strategy is synchronisation – competing on reliability of service. Techniques such as constraint management, just-in-time inventory, the Perfect Order, Make-to-Order practices, Sales and Operations planning, and risk management are among the techniques described in sychronisation, and in most cases, illustrated with real world examples.

Flowing from synchronisation is the customisation strategy or competing on customer intimacy. The guide highlights techniques such as control of the customer relationship, value analysis, and customer knowledge management and profitability management. Customisation places an

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emphasis on personal interactions and the goal of closely linking supply chain partners over time through value-adding services. Again, the author relies heavily on real world anecdotes and examples to illustrate these concepts.

The final strategy – which follows from customisation – is the innovation strategy or competing through a rapidly changing supply chain. Continuous feedback, product development, prototyping and product life-cycle management are among the practices described for successfully competing in an innovative environment. Firms that compete with innovative supply chains are identifiable not only by top tier positioning with the firm, but also by the amount of synergy and integration built into the organization.

The guide follows the strategy framework discussion with a chapter on organizing, training, and developing the staff to support each individual strategy. One of the highlights here is the linking of each supply chain strategy to the placement of SCM within the organizational structure of the firm. As strategy moves from rationalisation to innovation, the seat of the supply chain function moves closer to the top of the organization with the focus becoming more horizontal than vertical. Typical organization charts included here help to emphasize these points.

Of course, no strategy is workable without a set of enablers such as information technologies and metrics systems and the guide illustrates these using an enterprise resource planning system as the starting point. The book offers a selection of top-level corporate metrics as well as specific metrics linked to each strategy within the integrated framework. The guide concludes with an insightful discussion of the challenges for SCM in the future.

This guide covers a lot of territory, but does so in a very clear and objective manner. If the reader is looking for an in-depth discussion specific SCM techniques or strategic issues, this is not the text – there are other works that can provide that detail. But for corporate leadership or the SCM student looking to link the basics to a strategic framework, this guide in an excellent resource and would be a great addition to the practitioner's library. Reviewed by

Ralph H. Sees, Ph.D.
Colonel (Ret), US Army
Instructor of Supply Chain & Information Systems
Smeal College of Business
The Pennsylvania State University
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University Park, PA
rhs6@psu.edu

June 25, 2021 Page 33 of 33



People ▼

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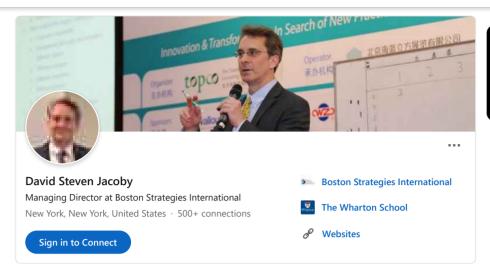
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David Jacoby



#### Articles by David Steven



Guide to Supply Chain Management: How Getting it Right Boosts Corporate Performance (Economist Books)

By David Steven Jacoby

Apr 20, 2018



Optimal Supply Chain Management in Oil, Gas and Power Generation

By David Steven Jacoby Apr 20, 2018



The High Cost of Low Prices: A Roadmap to Sustainable Prosperity

By David Steven Jacoby

Apr 20, 2018

#### Activity



Really enjoyed working with folks across Con Edison, New York City Department of Transportation, and FLO EV Charging to organize a ribbon-cutting...

Liked by David Steven Jacoby



I have completed my tour of duty as Special Assistant to the President for climate policy during the startup phase of the Biden-Harris...

Liked by David Steven Jacoby



Say goodbye to gas powered generators with the very first Battery-Operated generators from Focused Technology Solutions using off the shelf 18 Volt...

Liked by David Steven Jacoby

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#### Experience



#### Managing Director

Boston Strategies International

Jan 2005 - Present · 16 years 6 months

Providing digital solutions and outsourced services that make supply chains more innovative, agile, resilient, secure, sustainable, and customizable.



#### Strategic Market Planning, Commercialization and Tech Venture Development CRMM

Oct 2017 - Dec 2019 · 2 years 3 months

New York, New York

As President of Boston Strategies International and BSI Energy Ventures, led project teams for CBMM and other clients in product development, M&A / due diligence advisory, and project management related to high-performance engineered products, energy storage and electric vehicle supply chains.



#### Strategic Business Unit Transformation: Strategy, Planning & Implementation

Al-Suwaidi Holding Company

2015 - 2017 · 2 years

Al-Khobar Governorate, Saudi Arabia

Founded and led Boston Strategies Limited in serving oil, gas & power clients such as Al-Suwaidi, BP, Alcoa, Vale, Iberdrola, PTT (Thailand), TASNEE and their global suppliers such as Freudenberg, Wood Group, Cabot, Mittal Steel, US Steel in the oil & gas, power, metals/mining, and water treatment industries. Built a sales and delivery network encompassing offices in Bahrain, Boston, Dubai, New Delhi, and Saudi Arabia, and 40 international partners, channel partners, and technical specialists...

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#### Advisor

American Energy Partners Inc

Jan 2014 - Dec 2015 · 2 years



#### Major Capital Project Management

Aramco

Jan 2006 - Jan 2015 · 9 years 1 month

Al-Dammam Governorate, Saudi Arabia

Initiated and led Boston Strategies International's 12-year worldwide program that studied technological and cost developments and identified major capital expenditure reductions, billions of dollars in throughput increases, and lower inventory costs.



#### Project Management, East Anglia Offshore Wind

Vattenfall

2011 - 2011 · less than a year

London, United Kingdom



#### **IoT Strategy & Planning**

Feb 1998 - Sep 2007 · 9 years 8 months

Greater New York City Area

Via the Economist Intelligence Unit, served IT, IoT, Big Data and and information, communications & technology (ICT) clients such as Cisco, FICO, IRI, Microsoft, SAP, etc. wrote over a dozen visionary white papers and briefings on technology and shifting business models. Presented results at international conferences. Titles included, for example: The New Face of Purchasing (SAP); RFID Comes of Age; Unleashing the Power of Customer Data (Fair Isaac), Personalisation - Transforming the way...

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#### Boston University

Sep 2004 - Jun 2006 · 1 year 10 months

Greater Boston Area

Taught OM725 to 35 graduate students 14 classes per semester using a combination of case studies, lectures, and exercises. Topics included, for example: constraints management, statistical process control, quality management and Six Sigma, inventory and just-in-time, mass customization, service operations management, and supply chain strategy. Taught in 2005 and 2006.



#### Transportation Infrastructure Planning

U.S. Department of Transportation

2005 - 2006 · 1 year

Developed a methodology to help the US DOT account for supply chain benefits of large-scale infrastructure projects.



#### Global Supply Chain Manager

Minerals Technologies Inc.

2004 - 2005 · 1 year



#### **Product Development - Procurement & Supply Chain**

SAP

2004 - 2005 · 1 year



#### **Cross-Functional Process Improvement Program**

Mercedes-Benz do Brasil Ltda.

2003 - 2004 · 1 year

São Paulo Area, Brazil

Re-engineered processes to reduce lead time by 30% and cost by 35%.



#### **Operations Program Management**

Iron Mountain

2002 - 2004 · 2 years



#### M&A, Due Diligence

UPS

2001 - 2001 · less than a year

Atlanta Metropolitan Area



#### **Process Improvement**

FCA Fiat Chrysler Automobiles

1998 - 2001 · 3 years

Milan, Lombardy, Italy

Developed and implemented logistics decision support applications such as a freight data warehouse and a Return on Investment model. Architected, produced, and developed, an esourcing tool, Buyer2Buyer®. Developed alliances, implementation agreements, and business development initiatives, with companies such as Manhattan Associates, SAP, Yantra, TradingDynamics (Ariba), SAS, and Primavera.



#### **Intermodal Operations Planning**

CSX Transportation Intermodal

1996 - 1998 · 2 years

Greater Boston Area

Through consulting engagements for vehicle OEMs and transport clients such as BNSF, CSX, FedEx, General Motors, and Volvo, helped global transportation carriers, manufacturers, distributors and logistics service providers (I.T., warehousing, inventory management) improve profitability through purchasing, manufacturing, transportation, and maintenance operations benchmarking, demand forecasting, process redesign, planning and scheduling, materials management, and equipment/infrastructure...



#### **General Motors**

8 years

#### Logistics & Distribution

1996 - 1998 · 2 years

Frankfurt Am Main Area, Germany

#### Global Sourcing and Logistics

1992 - 1996 · 4 years

Greater Detroit Area

#### Global Sourcing

1990 - 1992 · 2 years

São Paulo Area, Brazil

Designed and implemented major components of a global sourcing program in Brazil that saved 20%.

#### FedEx

#### Global Strategic Procurement Project Management

Fed

Jan 1995 - Oct 1997 · 2 years 10 months

Greater Memphis Area



#### Corporate Strategy

Safran

1994 - 1996 · 2 years

Paris Area, France

Developed a strategy for participation in the maintenance/repair business.



#### Manager, International Development Program

A.T. Kearney

1989 - 1996 · 7 years

Based in Paris, Sao Paulo, Hong Kong, and USA (New York, Chicago, and Atlanta)

Serving electric and telecom equipment manufacturers as well as vehicle OEMs such as France Telecom, Mercedes-Benz, Schneider Electric, SNECMA, etc. managed engagements in strategic sourcing, transportation, logistics/supply chain optimization, maintenance management, outsourcing and business transformation (reengineering), M&A, privatization, competitive intelligence, and marketing strategy. For example:

Assessed the business strategy, base case, forecast scenarios, and valued an...

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#### **Organization Design**

Schneider Electric

1994 - 1995 · 1 year

Grenoble Area, France



#### **European Procurement Strategy**

Orange

1993 - 1994 · 1 year

Paris Area, France



#### **Logistics Transformation**

Galeries Lafayette

1992 - 1994 · 2 years

Paris Area, France

Founder



#### Junior Economist

The World Bank

1987 - 1987 · less than a year

Tunisia

Analyzed domestic resource cost of seven agricultural commodities in (potatoes, oranges, olives, dates, hard wheat, soft wheat, and barley). Follow-on mission based on a successful USAID project in the same ministry. The work, which was conducted in French, presaged a wave of free-market reforms.



#### **Business Analyst, Maritime & International Trade**

Oliver Wyman

1985 - 1987 · 2 years

Greater Boston Area

Developed business and investment strategies, economic analyses, and decision support tools for maritime clients and ports. Also participated in World Bank-funded projects for African governments.

Architected and built key elements of a computer-based World Trade Forecasting Service that was subsequently sold to an econometric forecasting firm.

Developed valuation models and scenarios during due-diligence for a ground-breaking multimodal merger.



#### Intern

Ford Motor Company

1983 - 1983 · less than a year

Paris Area, France

#### Education



#### The Wharton School

Master of Business Administration (M.B.A.)  $\cdot$  Business Strategy and Marketing



#### University of Pennsylvania - The Lauder Institute

Master of Arts (MA) · French (France) and Portuguese (Brazil)



#### Technische Universiteit Delft

Exchange Program · Political Economy



#### University of North Dakota

Bachelor of Science (B.Sc.)  $\cdot$  Engineering

Underway / partial



#### Université de Technologie de Compiègne (UTC)

Exchange Program  $\cdot$  Economics of the European Union



#### University of St.Gallen

European Economics

Activities and Societies: Prize Recipient and Symposium Speaker



#### University of Pennsylvania

Bachelor of Science (B.S.) · Economics, with concentrations in Finance and International Business

#### Volunteer Experience



Chief Judge, The Ptak Prize for Supply Chain Excellence



#### Lauder Global Alumni Association

University of Pennsylvania - The Lauder Institute

2019 - Present · 2 years



#### Reunion Committee

The Wharton School

2019 - Present · 2 years



#### **Board Member**

New York Energy Week

Jan 2019 - Present · 2 years 6 months

Environment

New York Energy Week is an annual event that unites diverse energy stakeholders. "By the industry, for the industry."

#### **Publications**

## Reinventing the Energy Value Chain: Cleaner, Greener, Smarter (Supply Chain Roadmaps for Digital Oilfields through Hydrogen Fuel Cells)

PennWell Books · March 1, 2021

Built on the foundation laid by David Jacoby's 2012 book Optimal Supply Chain Management in Oil, Gas, and Power Generation, Reinventing the Energy Value Chain expands those concepts to address energy transformation. As the push for diversification of energy sources continues, this book takes a pragmatic view. It provides a toolbox of techniques to successfully manage the range of complex tradeoffs that are inherent in capital projects and operations & maintenance across energy technologies and...

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Other authors



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#### From Bogota to Beijing: Development and Life After Globalization

Lexington Press · August 12, 2018

In two interwoven trips around the globe—one in 2010 and another in 2030—this book discovers Bogotá, Cartagena, Detroit, New York, Abuja, Cairo, Dammam, Abu Dhabi, Marseille, Hanover, Ho Chi Minh City, Kuala Lumpur, Shenzhen, Beijing, and other cities places along the way. The people and experiences along the way tell a fascinating, unique and insightful story.

The 2010 trip at the height of globalization takes place against a backdrop of frenzied global development. As he travels, the...

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#### Trump, Trade, and the End of Globalization

Praeger/CLIO · June 25, 2018

Free trade is under assault in more than a dozen countries worldwide. The United States is no longer competitive, and neither are the UK, Germany, France, and other industrialized nations.

The issue is not just emotional or transitory: the West is in a serious economic quandary. The US corporate tax rate stood at 35%, while other countries' rates were 12% to 25%. It spends 17% of GDP on healthcare, versus 9.7% for other countries. It spends 13% less on R&D than its trading partners, and

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Learn the secrets of international supply chains for familiar products such as coffee, bottled water, gasoline, and electronic devices, and how government policies and business norms around the world have evolved to allow practices that tolerate or even condone the depletion of natural resources, the blighting of native landscapes, and inhumane working conditions.

This book directly addresses controversial issues like climate change, carbon taxes, fracking, offshoring, urban sprawl...

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#### See publication 2

#### Optimal Supply Chain Management in Oil, Gas and Power Generation

PennWell · 2012

"FINALLY, someone who gets it and can document it to help everyone else understand! Thank you so much for coalescing what I have been thinking since the early 80's. You and Dr. Abada (foreword) have put into words what I have been exploring and trying to explain for almost 30 years."

"The author was amazingly able to write this book so technical managers and engineers would be able to use it as a reference and guide to understand various supply strategies, while supply chain...

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#### See publication 2

#### The Guide to Supply Chain Management

The Economist · 2009

From Amazon reviewers

"I never really understood what supply chain management was until I read this book. It seemed to mean something different depending on who I was talking to. Now I get it."

"If you are a novice to supply chain and often confused by conflicting definitions on what SCM is - and is not - read this book. If you are a supply chain practitioner and want some clear markers on designing a comprehensive supply chain strategy, read this book. David Jacoby's experience...

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#### Honors & Awards

#### **Certified Energy Procurement Professional**

Association of Energy Engineers

Mar 2016

#### Certified Fellow in Production and Inventory Management

Association for Supply Chain Management

Jan 2006

#### Certified in Supply Chain Management

Association for Supply Chain Management

Jan 2006

#### Certified Purchasing Manager (Lifetime)

Institute for Supply Management

Apr 2005

#### Certified in Integrated Resource Management

Association for Supply Chain Management

Nov 2004

#### **Certified in Transportation and Logistics**

American Society of Transportation & Logistics

Jun 1990

Jacoby



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#### Languages

#### French

Native or bilingual proficiency

#### Portuguese

Professional working proficiency

#### Recommendations received

"I had the pleasure to work alongside David and his team from BSI on a large Supply Chain initiative in the Middle East. David has a wealth of industry experience, a prolific industry commentator and author, is charismatic, pragmatic, certainly well-travelled and genuinely a really nice guy."

"David Jacoby is an industry leader who delivered our keynote address at the Health & Personal Care Logistics Conference, from his book "A Guide to Supply Chain Management" David's depth of the topic, and ability to connect to the audience is truly outstanding."

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- & Contact David Steven directly

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#### People also viewed



#### Prakash Shrivastava

Clinical Professor at The University of Texas at Dallas





#### Dr. Juri Behler

Project manager Erlangen



#### Eran Wagner

Co-Founder and Managing Partner at i3 Equity Partners



#### Jim Owens

Industry 4.0 I Digital Supply Chain I SVP Business Development

Greater Philadelphia



#### Vishal Shah

 $\label{thm:condition} \mbox{Vice President | Digital Transformation | 5G | IoT | AI | Cloud and Infrastructure Services | AR/VR San Diego, CA$ 



#### Volkmar Kunerth

CEO at Accentec Technologies LLC

San Francisco Bay Area



#### Yun Cao

Editor|Social Media|Branding and Marketing

Beijing, China



#### Yarnell Travers

Why think outside the box when u can just BE the box?

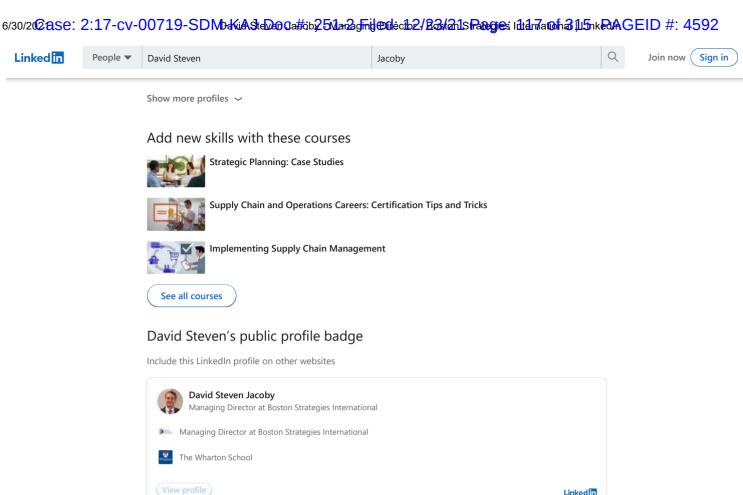
Baltimore City County, MD



#### Melissa Cockrell

General Manager at DHL Supply Chain

Fort Worth, TX



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# Over-reliance on GDP leads to unsustainable decision-making in government and business.

Gross Domestic Product (GDP) is reported quarterly and estimated monthly for every economy in the world. It is the single most watched economic indicator. According to the US Bureau of Economic Analysis, "GDP is watched around the world as an economic barometer. The White House and Congress use GDP numbers to plan spending and tax policy. The Federal Reserve uses them when setting monetary policy. State and local governments rely on GDP numbers, too. Business people use these stats when making decisions about jobs, expansion, investments, and more."

Yet, GDP, which was developed in 1934 and widely deployed starting in 1944, provides an incomplete picture of economic progress. Over the more than 70 years since its widespread adoption, environmental, social, and labor force issues have become far more complex. GDP can increase while conditions are getting worse for many or even most people. The gap between the economic data reported in the mainstream news on the one hand, and issues that are of personal concern to many people on the other, has widened over many years.

GDP-a addresses environmental, social, and economic factors that GDP ignores.

- GDP ignores the economic cost of environmental externalities such as CO2 emissions, air and water pollution, loss of biodiversity, deforestation, and loss of productive ecosystems. As a result, GDP has generally trended upward while unsustainable sideeffects such as climate change have gotten worse because they are ignored in most investing and policy decisions.
- GDP omits the economic cost of social imbalance. Illiteracy, inequality, poverty, criminality, mental health problems, drug abuse, and incarceration all have an economic cost. These problems result at least in part from our economic systems, but because they aren't measured in any systematic way they largely fester until they rise to the level of social unrest or chaos, evidenced recently by the Black Lives Matter movement.

• GDP does not consider the cost of idle labor, skills mismatches, and poverty. It can increase while unemployment and underemployment rise, while workers are dislocated by economic shifts, and while poverty increases, thereby suggesting policy guidance that ignores these trends.

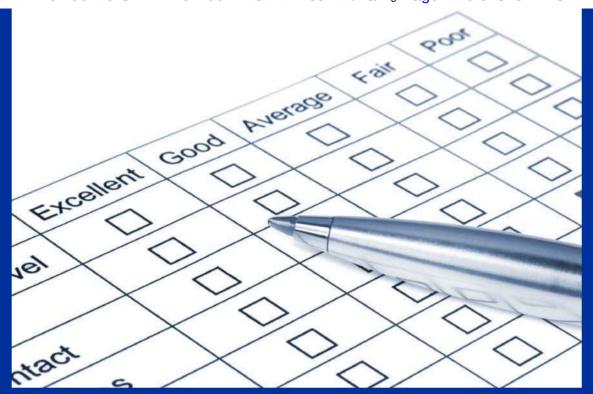
#### WHAT IS GDP-A?

GDP-a is a simple calculation that measures "hard" economic costs and is produced on a continuous basis for all countries by the GDP-a Institute. It has seven components:

- **GDP** (per capita)
- **Deforestation** (Cost of Overdevelopment Remediation)
- Pollution (Cost of Air, Water and CO2 Pollution)
- Gig Work (Cost of Idle Labor)
- **Disenfranchisement** (Labor Force Non-Participation)
- Poverty (Cost of Health & Welfare Backstops)
- Analphabetism (Cost of Under-Education)



WHY IS GDP-A BETTER?



Compared to other metrics of sustainable growth, the 24 GDP-a components and 5 related indices are:

- More specific and measurable than the UN's Sustainable Development Goals
- More quantitative than the Capability Approach
- More balanced than the Measure of Economic Welfare
- More relevant to today's issues than the Genuine Progress Indicator
- More statistically valid than Gross National Happiness and the Better Life Index
- Simpler to calculate than the Human Development Index, the Gini Index, and others
- Available for all countries and years, unlike the How's Life Index, Index of Sustainable Economic Welfare ("Green National Income") and all other metrics except GDP itself

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6/30/2@ase: 2:17-cv-00719-SDM-KAJ Doc #: 251-2н Frile (riba/li/2s/22/16/20)ge: 122 of 315 PAGEID #: 94597 David Jacoby

# DAVID STEVEN JACOBY

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David Steven Jacoby builds businesses that transform global supply chains. Based on extensive management experience in energy, automotive, transport, and retail in more than 50 countries managing and advising executive leadership teams, and authoring five books on supply chain strategy and management, it's safe to say that nobody else has such deep and practical first-hand knowledge of what's on the other end of your international supply chain and how you can use that information to reduce cost, grow revenue, and increase shareholder value.

He is the President of Boston Strategies International, a provider of supply chain solutions related to digitalization, automation, robotics, and autonomous delivery. He founded BSI Energy Ventures to incubate innovative e-mobility and energy storage initiatives, and is an advisory board member of New York Energy Week, WP Advisory (an M&A firm), the International Supply Chain Educational Association, and GDP-a.org. Previously he held international leadership roles at Kearney and Oliver Wyman in the United States, France, Brazil, Hong Kong, and elsewhere.

David taught Operations Management at Boston University's Questrom Graduate School of Business and earned his MBA and a Masters of Arts from the Wharton School at the University of Pennsylvania. He also took petroleum engineering courses at the College of Engineering and Mines of the University of North Dakota and holds six supply chain certifications. His academic and professional contributions to the field of supply chain management span more than 300 publications and media events.

For a short CV, click here.



Al/IoT/Digital Transformation: Cisco, FICO, IRI, Microsoft, NEC, SAP, tech ventures/spin-offs, etc.

<u>Auto/Transport/Mobility</u>: BNSF, CSX, FedEx, Fiat, GM, Mercedes-Benz, Renault, SNECMA, Volvo, VW, ZF, etc.

Power/Energy: Avangrid, Aramco, BP, Iberdrola, Raytheon, Siemens, Vattenfall, etc.

 $\underline{\text{Telecommunications \& Electrical Distribution}} : \text{France Telecom, Schneider Electric, etc.}$ 

Industrial Manufacturers: Siemens, ThyssenKrupp, Cabot Corp., CBMM, Vale, Georgia Pacific, Minerals Technologies, Trumpf, ZF, etc.

Medical and Pharmaceutical companies: Pfizer, Boston Scientific, Charles River Laboratories, SpineFrontier, etc.

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Retailers and Consumer Packaged Goods (CPG) manufacturers: Gillette, Sears, Galeries Lafayette, A.T. Cross, Rent-A-Center, etc.

Law Firms: Duane Morris, Kirkland & Ellis, Carmody & Torrance, etc.

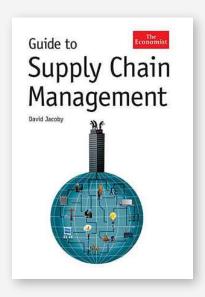
Government Agencies: US Department of Transportation, the Mexican Agency for Ecology & Climate Change, the New York City Housing Authority, etc.

<u>Investors</u>: Credit Suisse, The World Bank, Bank of Montreal (BMO), etc.

<u>Contract Solution Providers and EPCs</u>: Raytheon, Wood Group, Iron Mountain, etc.

While based in Paris, Dubai, Hong Kong, São Paulo, Dammam, New York, and elsewhere, David has led teams in Australia, Austria, Bahrain, Belgium, Brazil, Cambodia, Canada, China, Colombia, Denmark, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kuwait, Lebanon, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Poland, Portugal, Qatar, Russia, Saudi Arabia, South Korea, Spain, Sweden, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, United States, Vanuatu, Venezuela, Vietnam, and other countries.

## **BOOKS & PUBLICATIONS**



**READ MORE** 

#### **BOOKS**

Guide to Supply Chain Management (The Economist 2009)

Optimal Supply Chain Management in Oil, Gas, and Power Generation (PennWell 2012)

The High Cost of Low Prices (Business Expert Press, 2018)

Trump, Trade, and the End of Globalization (Praeger/ABC-CLIO, 2018)

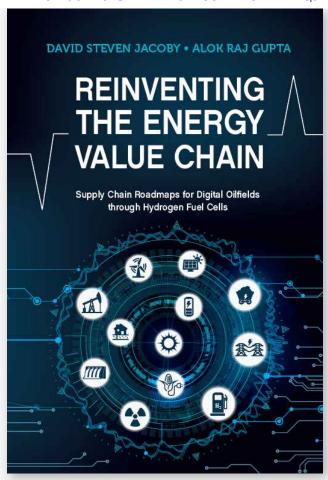
From Bogota to Beijing (Lexington Press, 2018).

Reinventing the Energy Value Chain (PennWell, 2021)

#### **PUBLICATIONS**

In addition, he has contributed 250 speeches, articles and webcasts to publications such as Oil and Gas Journal, Supply Chain Management Review, Energy Tribune, and Supply Chain Quarterly.

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**READ MORE** 

**MORE BOOKS BY DAVID JACOBY** 

#### **CERTIFICATIONS**

- Delft University of Technology (Netherlands)
- Technological University of Compiegne (France)
- Certified Energy Procurement Professional (CEP)
- Certified Fellow in Production and Inventory Management (CFPIM)
- Certified in Supply Chain Management (CSCP)
- Certified in Integrated Resource Management (CIRM)
- Certified in Purchasing Management (Lifetime C.P.M.)
- Certified in Transportation and Logistics (CTL)
- Member of the Society of Petroleum Engineers

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"David and his team...did an outstanding job on our supply chain strategy project at NYCHA. Their research and recommendations were thorough and data-driven. David is an expert who never stops learning and a consummate professional who focuses on providing value for his clients and his profession. [He delivers] great results, expertise, and high integrity"

#### **Gary Smith**

Chief Operations Officer, New York City Transit Authority

"David is a highly respected thought and practice leader in supply chain management. He has consulted for over 30 years in Procurement, Transportation, Logistics, Manufacturing, Economics, and International Trade; and he is excellent at putting this acquired knowledge and functional experience to work solving complicated business issues. Having seen his work, heard his presentations, and read his books, I high recommend him and his team in solving your business challenges and or in developing your Supply Chain Strategy."

#### **Greg Cornelius**

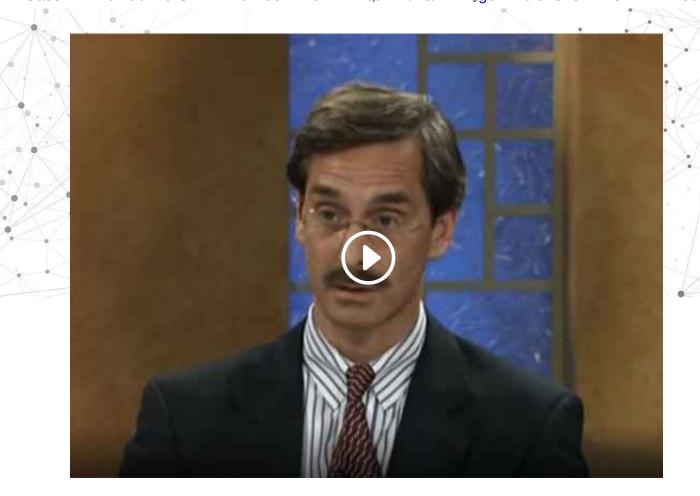
Director, Supply Chain Management, Haemonetics

"David has the ability to analyze complex problems and present solutions in a clear, concise, practical manner. His primary research is excellent and he has consistently added a welcomed level of sophistication to the field of supply chain management. I am currently using his new book in university level courses and it has been well received by my students."

#### Rich Weissman

Program Director, Endicott College

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## **LET'S WORK TOGETHER**

Let's be a success story – Contact me today.

CONTACT ME

David Steven Jacoby @2021 | Website Designed by Beth Leffel







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# Which APICS Credential is Right for Me?

Whether you need to streamline your supply chain, master the basics of materials and operations management or build your knowledge in logistics, transportation and distribution, ASCM has the right APICS certification for you.

## **Designation Type**

## **CPIM**

#### Certification

APICS CPIM certification may be right for you if you want to demonstrate professional knowledge in increasing an organization's profitability by optimizing its production and inventory management within the "four walls" of the organization.

# **CSCP**

#### Certification

APICS CSCP certification may be right for you if you want to demonstrate mastery of the extended supply chain, from the organization's suppliers through to the end customer. The CSCP course covers topics that extend beyond the organization (e.g., globalization, IT in the supply chain, logistics, customer relations).

# CLTD

#### Certification

APICS CLTD certification may be right for you if you want to demonstrate professional knowledge in logistics, transportation and distribution.

# **SCOR-P**

#### **Endorsement**

APICS SCOR-P
endorsement may be right
for you if you want to
understand how to apply
the SCOR model, how to
use and interpret SCOR
metrics and how to
organize a typical SCOR
project.

## **Educational / Professional Prerequisites**

# **CPIM**

None (no bachelor's degree or international equivalent is required)

# **CSCP**

- Three years of related business experience; or
- Bachelor's degree (or international equivalent); or
- The candidate must hold one of the following designations (CPIM, CFPIM, CIRM, SCOR-P, CPM, CSM or CPSM).

# **CLTD**

None (no bachelor's degree or international equivalent is required)

# SCOR-P

None (no bachelor's degree or international equivalent is required)





## **CPIM**

CPIM focuses on the knowledge of production and inventory management within the organization. The APICS **CPIM** designation provides the candidate with the knowledge to improve productivity within the organization's supply chain and increase profitability by optimizing the organization's inventory management. The CPIM candidate must pass two exams.

# **CSCP**

CSCP focuses on the mastery of the extended supply chain — extending beyond internal operations from organizations' suppliers through to the end customer. The APICS CSCP candidate will learn how to streamline production and cut costs by strategically looking outside internal operations and throughout the entire supply chain. The CSCP candidate must pass one exam.

## CLTD

The APICS CLTD candidate demonstrates in-depth knowledge of logistics strategy and planning, order and warehouse management, transportation fundamentals and global logistics, including risk management and sustainability logistics.

# **SCOR-P**

Candidates learn the major process components (Plan, Source, Make, Deliver, Return and Enable) for managing and measuring the performance of a global supply chain by implementing the Supply Chain Operations Reference (SCOR) model.

## Responsibilities

## **CPIM**

- Work with an ERP system, either as an IT professionals or system user
- Work with other manufacturing systems and technologies
- Planning, at any level of the planning hierarchy
- Member of an S&OP team
- Work with the Master Production Schedule
- Work with Materials Requirement Planning (MRP)
- Manage capacity requirement planning
- Manufacturing Inventory management and control
- Plan procurement and external sources of supply

# **CSCP**

- Supply chain strategy and/or design
- Supply chain technology selection, setup, maintenance or use
- Demand Planning and Management
- Customer Relationship Management
- Supplier Relationship Management
- Supply chain-wide inventory management
- Managing reverse logistics
- Managing risk in the supply chain – identifying, assessing, response planning
- Measure supply chains and their metrics
- Supply chain change management
- Supply chain improvement and best

# **CLTD**

- Oversee the planning and execution of forward and reverse logistics
- Logistics network design
- Order Management
- Customer Service
   Management
- Warehouse or distribution inventory management
- Warehouse strategy and/or layout;
   Warehouse space management
- Logistics/ Distribution/ Warehouse technology and information processing
- Executing requirements for the planning, scheduling, and budgeting of transportation systems
- Responsible for the most economic

# **SCOR-P**

- Analyzing the current state of your company's processes and comparing company performance to corporate goals
- Evaluate supply chain performance
- Oversee supply chain improvement program or a porfolio of projects
- Team member on a supply chain improvement project

## SHOW LESS



- Measure producti
- Measure production performance
- Manufacturing finance

#### **SHOW LESS**

#### **SHOW LESS**

- products
- Carrier selection and negotiations
- Transportation mode analysis
- Global logistics responsibilities
- Logistics or transportation risk

SHOW LESS

#### **Outcomes**

## **CPIM**

# After earning your CPIM, you will be able to:

- Increase inventory accuracy and Rreduce inventory
- Improve forecasting
- Improve the S&OP process
- Manage and apply capacity resource planning
- Work more productively with your company's ERP system
- Effectively schedule material through the plant
- Improve operation's strategic alignment
- Better manage the Master Production Schedule
- Improve the results of an Material Requirement Plan (MRP) run
- Improve inventory storage, flow and handling
- Positively impact product design activities
- Manage continuous improvement projects

# **CSCP**

# After earning your CSCP, you will be able to:

- Help your company reach it's ideal supply chain state
- Use data to link production, distribution, purchasing and service
- Reduce waste in supply chains
- Identify and classify supply chain risk and develop risk response plans
- Improve communications throughout the supply chain
- Develop a supply chain strategy aligned to you company's strategy
- Help to design a supply chain
- Optimize product design principles and techniques to get to market more efficiently
- Select technologies to manage and improve supply chains
- Manage supply chain projects

# **CLTD**

# After earning your CLTD, you will be able to:

- Improve distribution inventory management
- Develop and monitor warehouse performance metrics
- Identify and mitigate risk in logistics and transportation
- Manage and execute orders with an emphasis on logistics
- Identify and maintain optimal inventory levels including costs, controls and policy
- Reduce cost and cycle time while increasing accuracy and efficiency
- Align logistics strategy and design to the company's objectives
- Link logistics to achieving consistent customer service at the least cost
- Design effective warehouse layouts
- Improve transportation and logistics design

# **SCOR-P**

# After earning your SCOR-P, you will be able to:

- Develop and organize a supply chain improvement program using the SCOR Model Reference Framework.
- Use the SCOR supply chain improvement program racetrack as a structure for you supply chain improvement project.
- Analyze performance gaps based on the metrics established in the SCOR Framework.
- Optimize your improvement program by linking performance issues to projects
- Use your new knowledge and skills to complete key implementation program deliverables.
- Complete supply chain improvment implementations faster.
- Improve overall operatons performance

**SHOW LESS** 









- Plan inventory requirements throughout the supply chain
- Develop collaborative relationships with customers and vendors
- Develop and implement best practices in standards, regulations and sustainability
- Develop performance measurements in order to improve customer service
- Develop and manage supply chain improvement initiatives

SHOW LESS

#### υρειατιστισ

- Utilize transportation to position inventory throughout the supply chain
- Use reverse logistics to manage product returns and strengthen the triple bottom line (TBL)

#### **SHOW LESS**

## **Learning Method**

## **CPIM**

- Self Study
- Instructor-Supported
- Instructor-Led
- Corporate/Group
   Training

**LEARN MORE** 

# **CSCP**

- Self Study
- Instructor-Supported
- Instructor-Led
- Corporate/Group Training

**LEARN MORE** 

# **CLTD**

- Self Study
- Instructor-Supported
- Instructor-Led
- Corporate/Group Training

**LEARN MORE** 

# **SCOR-P**

- Instructor-Supported
- Instructor-House Training
- Corporate/Group Training

**LEARN MORE** 

Click here for a downloadable credential comparison chart.



Log In

Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 132 of 315 PAGEID #: 4807 David Jacoby

## **XPO timeline markers**

E	xhibit	8
ed		

Marker	Theory	Date
CGL disseminates AES training manual	CGL had normal industry controls, which were ignored after XPO took it over	2/15/11 (based on screenshot date on Oliver p455)
CGL disseminates employee training manual	CGL had normal industry controls, which were ignored after XPO took it over	1/13 (based on screenshot date on Oliver p348)
XPO takes over CGL, pursues new growth strategy	Acquisition strategy prioritized growth over management	9/11
XPO disseminates employee handbook	CGL had appropriate controls in place	11/12
XPO Logistics hires Baltagi	Baltagi sees that there are almost no management controls	9/5/12 (start date)
XPO acquires Pacer	Adds 950 employees	3/31/14
XPO acquires Dessentrangle	Adds 42,350 employees. Extreme headcount spike was unmanageable	4/28/15
XPO acquires Conway	Adds 30,000 employees	10/15
Baltagi approaches GSL	Baltagi initiates Ponzi scheme on behalf of Adkins	2/16
GSL consummate loan to Landash	Baltagi took advantage of the lack of structure	3/9/16 (First Amended Complaint p15)
Star Funding email XPO CEO alleging coverup	XPO should have known there was a crime going on	5/13/16 (Muzi p903)
Star Funding launches lawsuit against XPO	XPO's internal controls failed	2/17 (First Amended Complaint p17)
Baltagi becomes a contractor	XPO tries to disassociate potential fraud from its lack of internal controls	6/1/16 (Baltagi p515)
XPO terminates Baltagi contractor agreement	XPO acknowledges Baltagi's role in the fraud	4/30/18 (Komsky p361)
Baltagi continues to represent himself as an XPO employee	XPO is apparently still unwilling to confront or discipline Baltagi.	5/31/21

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## **XPO timeline markers**

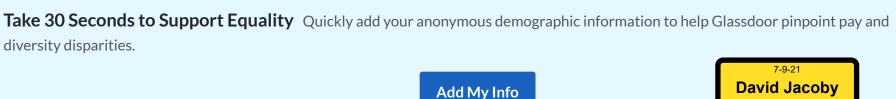
Exhibit 9

Marker	Theory	Date
XPO takes over CGL, pursues	Acquisition strategy prioritized growth	9/11
new growth strategy	over management	
XPO Logistics hires Baltagi	Baltagi sees that there are almost no	9/5/12 (start
	management controls	date)
XPO disseminates employee	XPO ignored controls	11/12
handbook and training manual		1/13 (based on
		screenshot date on Oliver p348)
		2/15/11 (based
		on screenshot date on Oliver p455)
XPO acquires Pacer	Adds 950 employees	3/31/14
XPO acquires Dessentrangle	Adds 42,350 employees. Extreme	4/28/15
	headcount spike was unmanageable	
XPO acquires Conway	Adds 30,000 employees	10/15
Baltagi approaches GSL	Baltagi initiates Ponzi scheme on	2/16
	behalf of Adkins	
GSL Consummates Landash	Baltagi took advantage of the lack of	3/9/16 (First
Loan	structure	Amended Complaint p15)
Star Funding Emails XPO CEO	XPO should have known there was a	5/13/16 (Muzi
Alleging Coverup	crime going on	p903)
Baltagi Becomes Contractor	XPO tries to disassociate potential	6/1/16 (Baltagi
	fraud from its lack of internal controls	p515) or 7/1/16 (Muzi p191)
Star Funding Sues XPO	XPO's internal controls failed	2/17 (First
Ü		Amended Complaint p17)
XPO Ends Baltagi Contractor	XPO acknowledges Baltagi's role in the	4/30/18
Agreement	fraud	(Komsky p361)
Baltagi Continues to Represent	XPO is apparently still unwilling to	5/31/21
Self as XPO Employee	confront or discipline Baltagi.	

Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 134 of 315 PAGEID #: 4609 David Jacoby

## **XPO timeline markers**

Marker	Theory	Date
CGL disseminates AES training manual	CGL had normal industry controls, which were ignored after XPO took it over	2/15/11 (based on screenshot date on Oliver p455)
XPO takes over CGL, pursues new growth strategy	Acquisition strategy prioritized growth over management	9/11
XPO Logistics hires Baltagi	Baltagi sees that there are almost no management controls	9/5/12 (start date)
XPO disseminates employee handbook	CGL had appropriate controls in place	11/12
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XPO terminates Baltagi contractor agreement	XPO acknowledges Baltagi's role in the fraud	
Baltagi continues to represent himself as an XPO employee	XPO is apparently still unwilling to confront or discipline Baltagi.	5/31/21



David Jacoby

Exhibit 11





## glassdoor

## **Employee Review**

See All Reviews (4110)

1.0 \* \* \* \* \* **>** 

Former Employee, less than 1 year

## **Most Corrupt Company Imaginable**

May 11, 2017 - Dispatcher in Vancouver, BC

X Recommend X CEO Approval

## X Business Outlook

#### **Pros**

It's a job. I suppose it's better than being unemployed and on the street. Getting hired is easy. All that you need is a GED and no experience.

#### Cons

Unprofessionalism, lies, cheating contractors of owed money, disorganization, understaffed, and usual laundry list of problems.

Advice to Management

## **XPO Logistics Careers**



Be part of something big. XPO provides cutting-edge supply chain solutions to the world's most successful companies.

Our work is... – More

Opportunities	>
Career Growth	>
Safety	>
Military and Veterans	>

Jobs You May Like

X

Hire managers who don't enjoy lying to staff, contractors, and clients. Hire dispatchers who don't drink and get high at work. Set standards and actually apply them.

See reviews by: **Popularity** | **Rating** | **Date** | **All** 



**Box Truck Delivery Driver** (Contract)

XPO Logistics, Inc. - Presque Isle, ME

6 people found this review helpful







Loss Prevention Lead - 1st, 2nd and 3rd Shifts

XPO Logistics, Inc. - San Bernardino, CA \$33K - \$61K



Loss Prevention Agent - 1st, 2nd and 3rd Shifts

XPO Logistics, Inc. - San Bernardino, CA \$35K - \$53K



Material Handler

XPO Logistics, Inc. - Fresno, CA \$30K - \$41K



**Customer Service** Representative II - Part-Time

XPO Logistics, Inc. - San Leandro, CA \$40K - \$76K

## **Other Employee Reviews**

See All (4110)

( Helpful

5.0 **\*\*\*\*** 

Current Employee, more than 3 years

## **XPO Logistics**

May 23, 2021 - Operations Supervisor in North Haven, CT

✓ Recommend ✓ CEO Approval ✓ Business Outlook

#### **Pros**

The company had a great work environment

#### Cons

Is hard to get a promotion

Be the first to find this review helpful



+ Add Photo







See All Photos

(c) Helpful

Share

Report

 $1.0 \star \star \star \star \star \star \vee$ 

Former Employee, more than 5 years

## **Worse Place to work since XPO took over Conway**

May 10, 2021 - Customer Service Representative in Butte, MT

X Recommend — CEO Approval X Business Outlook

#### Pros

drivers and staff are wonderful, respectable people to work with

#### Cons

This company was great when Con-Way Freight, then XPO cut staff extremely causing everyone to do the work of 2-3 people thus lowering customer service, causing more damaged freight and very angry customers, only cared about numbers and stock market and not employees and customers as Conway did. It is a shame they lost some very good managers, sales reps, and customer service reps who never missed a day and that were very accurate and dedicated to the business then made them do the job that for many years 2-3 people did was put onto 1 person, and lack of warehouse staffing caused to much of a hurry thus destroying the customers freight, body hoods come in looking like bumpers.. Shame on you XPO you are not an LTL freight company. Supervisors do not help as much as should and do not even know most of the job of those they are supervising so are of no assistance when needed or available to help or teach so, you end up training yourself how to do new tasks through trial and error. When staff and management ask for help they are threatened to be replaced. Months of telling them need help and refuse to give the staffing needed putting everyone under undo stress and lowering customer service

Job Seekers Also Viewed <

**Con-way Freight** 

3.1 ★

**Compare** 

483 Reviews

**Ryder System** 

3.3 ★

**Compare** 

1.657 Reviews

**Allen Lund** 

**4.4** ★

Compare

73 Reviews

**Total Quality Logistics** 

3.5 ★

Compare

3.393 Reviews

#### Advice to Management

Start caring about your employees and customers instead of your numbers and stock market, you have lost allot of good dedicated employees by not acknowledging the help they asked for in surveys, through HR and cut staff to give managers nothing to work with and csr's trying to do too many jobs at once causing severe undo stress and loosing some very valuable, knowledgeable employees

1 person found this review helpful

	Не	lpfu
$\sim$		



Report

#### **XPO Logistics Response**

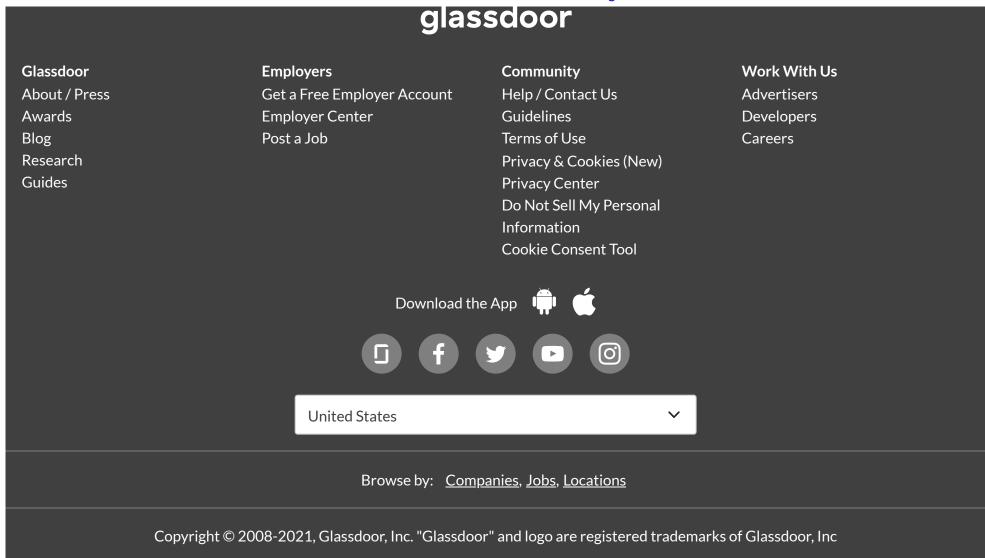
**Employment Brand Analyst** 

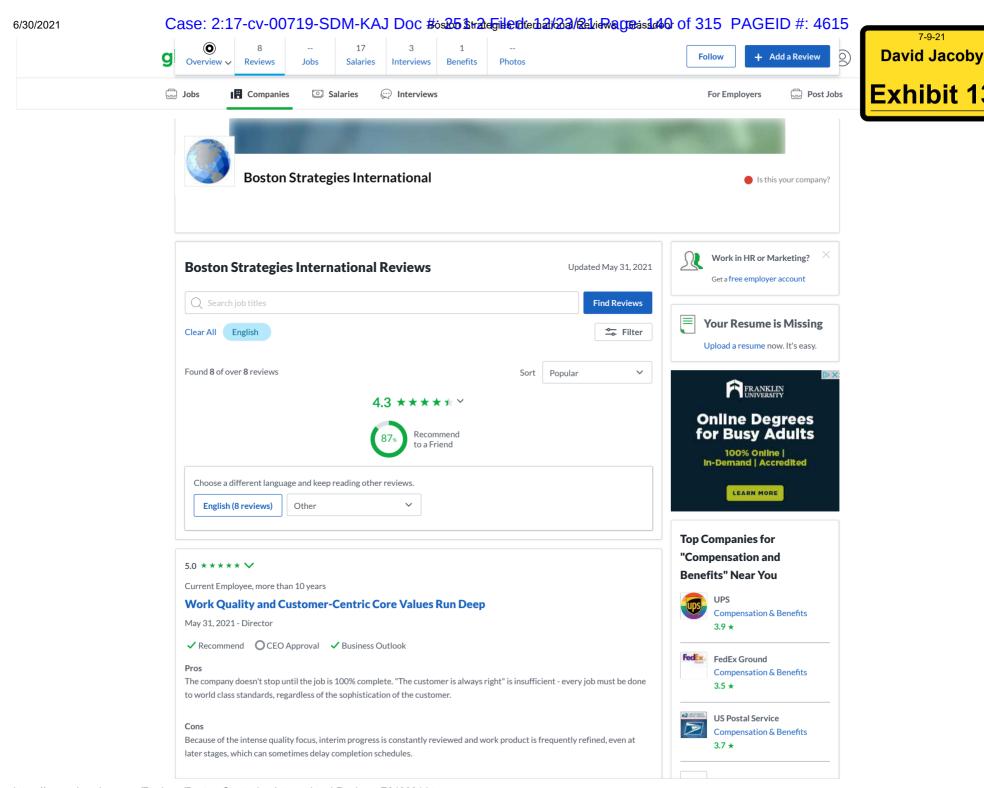
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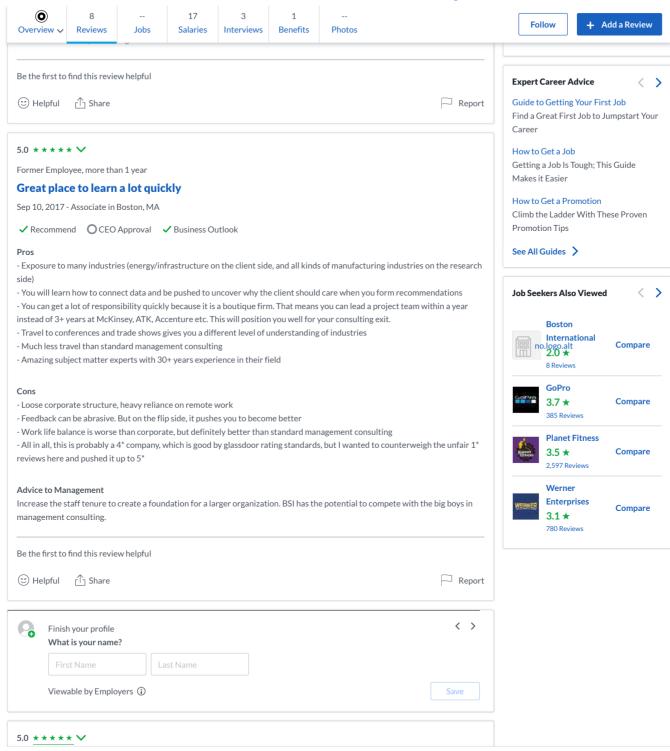
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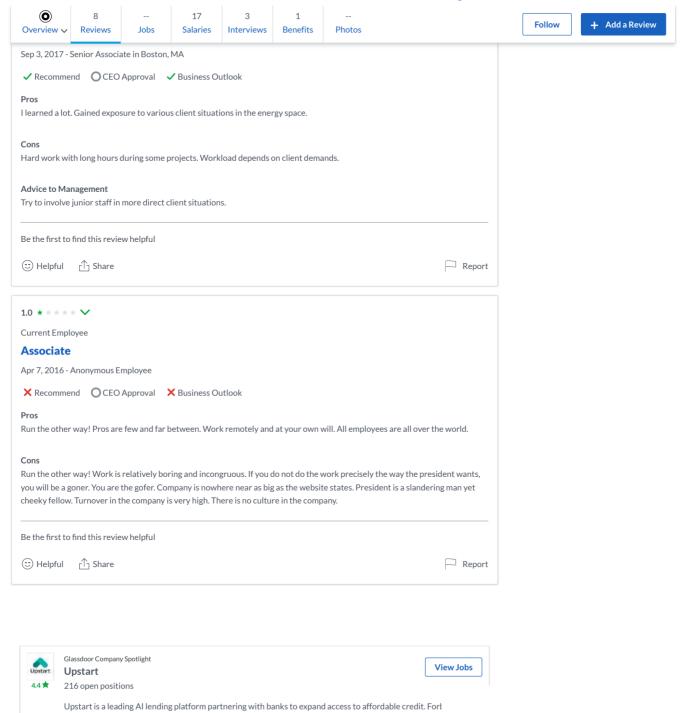




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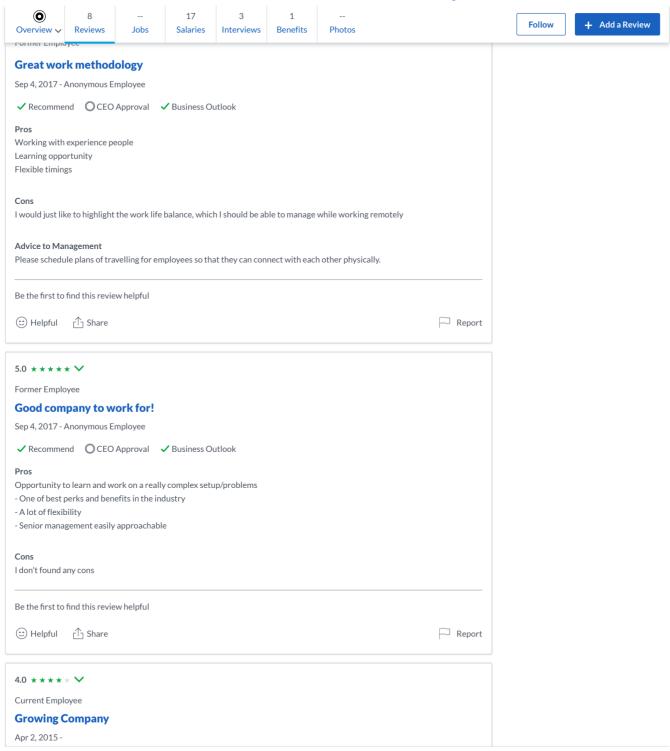


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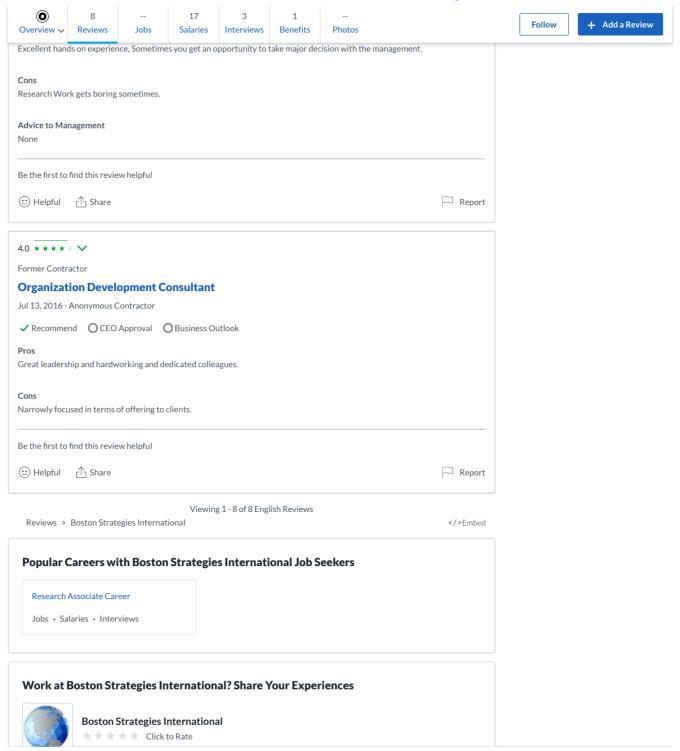


recently ranked Upstart #12 on its list of "most promising AI companies in America." Inc. Ma

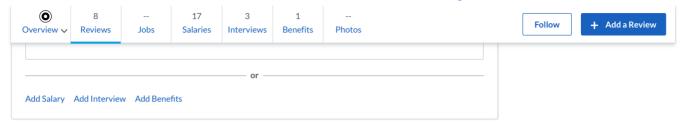
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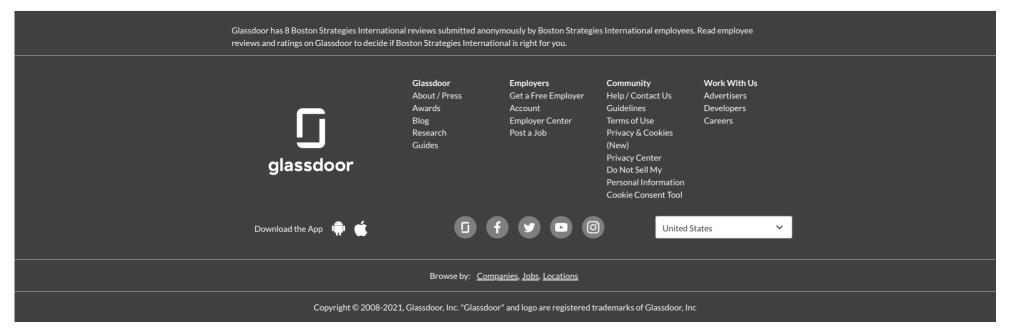
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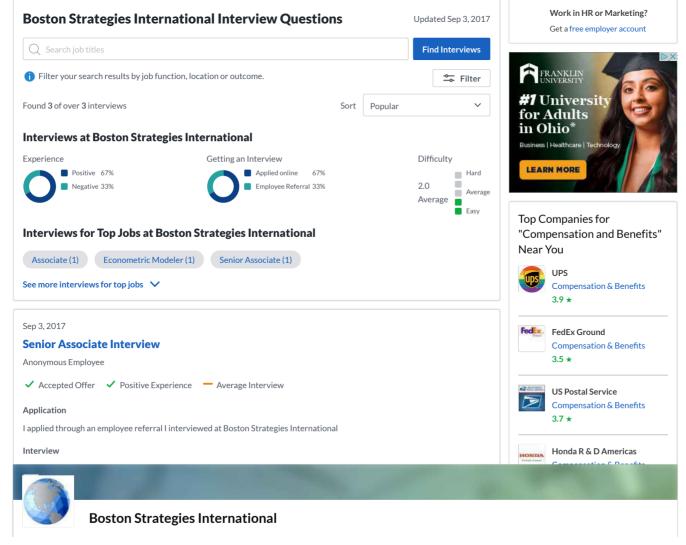
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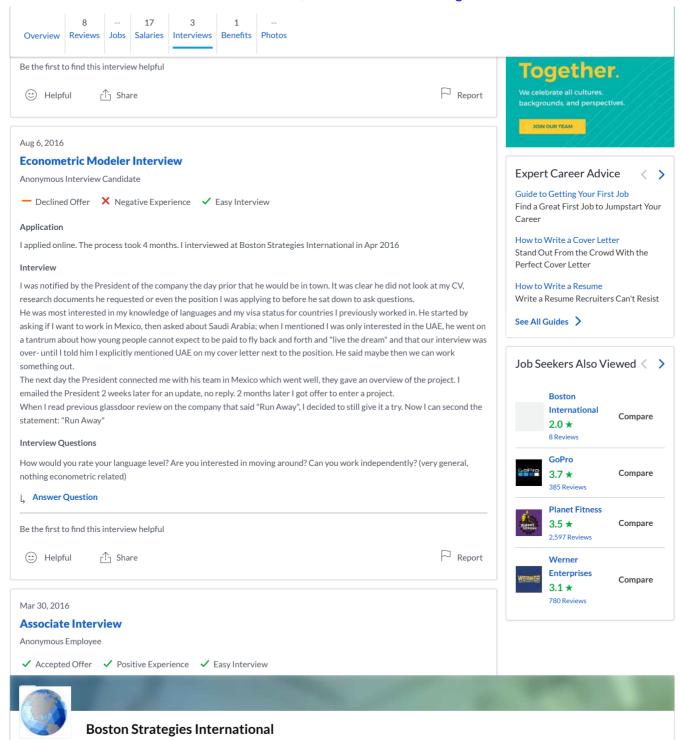




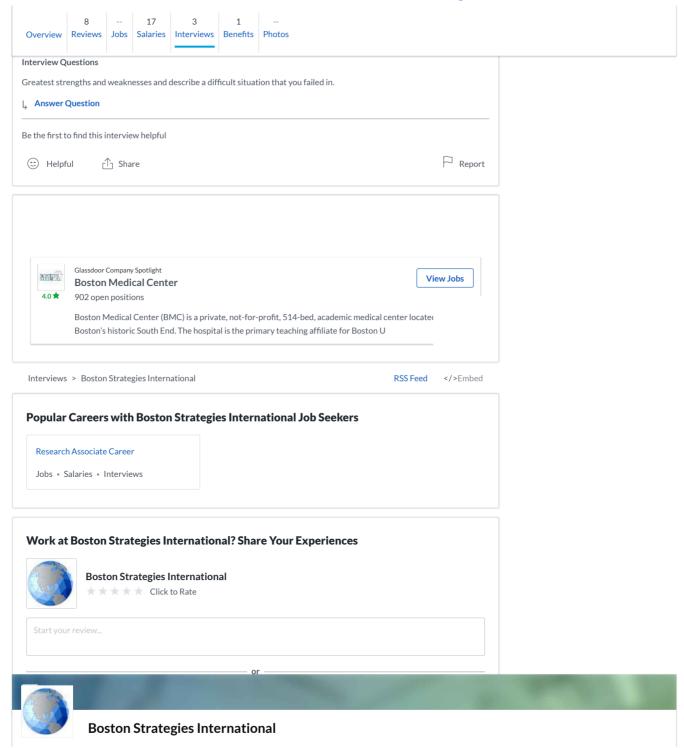




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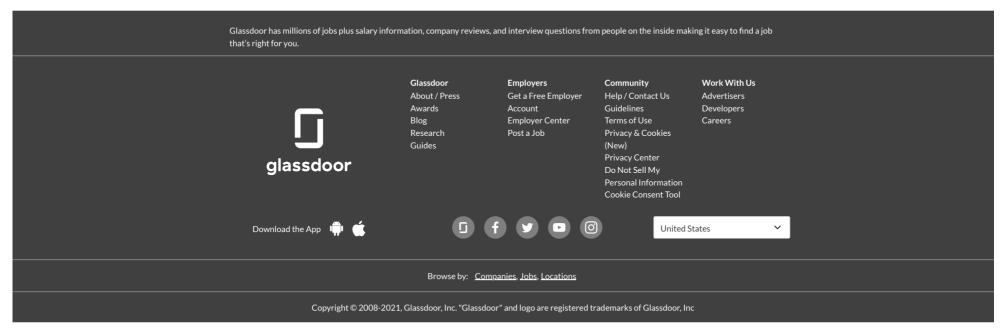


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Overview Reviews Jobs Salaries Interviews Benefits Photos





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### Case: 2:17-cv-00719-SDM-KAJ Doc #: 351-2 Filed: 12/23/21 Page: 152 of 315 PAGEID #: 4627 FILED POINT S ACTIVIST SUCCESS IDENTIFYING Problematic Roll-Up Strategies

#### Spruce Point Capital Is An Industry Recognized Research Activist Investment Firm Founded In 2009

- Founded by Ben Axler, a former investment banker with 18 years experience on Wall Street
- Ranked the #1 Short-Seller by Sumzero after a comprehensive study of 12,000 analyst recommendations dating to 2008 (March 2015)
- Ranked the #13 Most Influential FinTweeter on Twitter according to Sentieo (Dec 2016)

#### Spruce Point's Activist Successes Identifying Problematic Roll-Up Acquisition Strategies

	Echo Global Logistics (Nasdaq: ECHO)	CECO Environmental (Nasdaq: CECE)	LKQ Corp (Nasdaq: LKQ)	AMTEK (NYSE: AME)
Report	<u>9/8/16</u>	<u>2/13/17</u>	1/15/14 (Prescience Point)*	11/14/14
Market Cap	\$820 million	\$430 million	\$10.1 billion	\$12.3 billion
Company Promotion	An effective roll-up acquirer in the third party logistics sector capable of extracting significant operating leverage and \$200-\$300m of revenue synergies from the Command Transportation deal	An effective roll-up acquirer serving the environmental, energy, fluid handling and filtration industrial segments. Its largest PMFG acquisition would be a success and allow for rapid delivering of its balance sheet, and renewed organic growth opportunities	Best of breed recycled auto part distributor capable of effecting a roll-up strategy and producing consistent double digit revenue and EPS growth	Best of breed roll-up in the test and measurement equipment space with world class EBITDA margins and an ability to never miss Wall St estimates through any economic cycle
Our Criticism	Echo's management team has a history of value destruction, its roll-up strategy was ineffective, its organic growth was approaching zero, and its GAAP/Non-GAAP accounting was signaling financial strain. We argued it paid a peak multiple for Command and would miss its synergy targets. We estimated 50%-60% downside risk	A poorly constructed roll-up, we argued CECO was forestalling a goodwill impairment, its cash flow would fall significantly in 2017, and it could come under covenant pressure. CECO was misportraying its true leverage, while its end markets were contracting.  We estimated downside risk of 30%-60%	An ineffective roll-up by a management team with a history of financial failure (Waste Management / Discovery Zone). LKQ is caught in a gross margin squeeze being masked by relentless acquisitions, and aggressive inventory accounting open to significant mgmt judgement. Its move to Europe is an implicit acknowledgement of waning domestic growth	We argued AMETEK was not creating any value by delivering zero organic growth and that its financial statements showed signs of strain with aggressive accounting. We believed its premium valuation multiple could not be sustained as the quality of its acquisitions deteriorated
Successful Outcome	In <u>02'17</u> ECHO cut its FY17 revenue outlook and suspended longer-term guidance given changes in its end market and failure to hit synergy targets with Command. ECHO Sell-side brokers downgraded their recommendations from Buy to Hold. ECHO's shares fell to a 52 week low of \$13, or nearly 50%	CECO took a goodwill charge in Q4'16 as predicted, suspended its dividend, and charged its financial leverage presentation in its investors presentation - implicitly acknowledging our criticism. Q2'17 results were below expectations, it admitted continuing challenges in its end markets, and its YTD operating cash flow evaporated. CECO's shares were downgraded, and shares fell >40%	Gross margins have declined from over 47% to 39%. The Company's successive acquisitions in Europe and domestically have failed to boost its share price. LKQ's multiples have contracted significantly. Its CFO was replaced in Feb 2015 and its CEO stepped down in March 2017. Shares are down 22% since report inception.	By early 2016, AMETEK began guiding down sales and earnings expectations for multiple quarters. Its CEO and CFO abruptly retired. Its share price fell nearly 20% from our initial report date

Past performance is no guarantee of future performance. Short-selling involves a high degree of risk, including the risk of infinite loss potential. Please see Full Legal Disclaimer at the front of the presentation.

<sup>\*</sup> Report produced by Prescience Point of which Spruce Point's founder was a contributing author



#### Executive Summary

SPRUCE POINT

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 154 of 315 PAGEID #: 4629 Spruce Point Estimates 40% — 60% Intermediate Downside Risk, 100% Long-Term Downside

Spruce Point has been following XPO Logistics (NYSE: XPO) for years, a transportation and logistics roll-up founded by Bradley Jacobs, cofounder of United Rentals (URI) which collapsed in an accounting scandal during his leadership. Based on our forensic investigation, we believe XPO appears to be executing a similar playbook to URI - resulting in financial irregularities that conveniently cover its growing financial strain and inability to complete additional acquisitions despite promises. Given its unreliable and dubious financials, \$4.7 bn debt burden, inability to generate sustaining free cash flow, and dependency on external capital and asset sales, we have a worst-case terminal price target of zero.

A Value Destructive Roll-Up, Covering Financial Strain and **Dependent On Financing For Survival**  XPO has completed 17 acquisitions since Jacobs took control in 2011 and deployed \$6.1 billion of capital. Yet by our calculations, the Company has generated \$73m of cumulative adjusted free cash flow in an expansionary economic period. In our view, this is indicative of a failed business strategy yielding a paltry 1.2% return on invested capital. XPO is dependent on external capital, asset sales, and factoring receivables to survive and is covering up a working capital crunch that can been seen by bank overdrafts - just like Maxar Technologies (MAXR). As credit conditions tighten, cost of capital increases, and XPO's business practices come under greater scrutiny (eq. U.S. Senate), its share price could swiftly collapse in Enron-style fashion.

Insider's Undisclosed **Association With Convicted Felons And** A Massive Ponzi Scheme

CEO Jacobs has surrounded himself with a web of associates from his United Waste Systems and United Rentals days. Two of his partners, Mike Nolan and John Milne, were convicted of accounting fraud. XPO's director G.C. Andersen recently employed Milne at his financial advisory firm during a time the company worked on private placements (potentially XPO's deals) and was sanctioned by FINRA. This wasn't disclosed to investors. XPO's audit committee director, Adrian Kingshott, has omitted from his bio his role in the distribution of note securities in the \$700m Marc Drier Ponzi scheme.

**Dubious Financial Presentation And** Aggressive **Accounting** 

In our opinion, XPO has used a nearly identical playbook from United Rentals leading up to its SEC investigation, executive felony convictions, and share price collapse. We find concrete evidence to suggest dubious tax accounting, under-reporting of bad debts, phantom income through unaccountable M&A earn-out labilities, and aggressive amortization assumptions: all designed to portray glowing "Non-GAAP" results. Additionally, we provide evidence that its "organic revenue growth" cannot be relied upon, its free cash flow does not reflect its fragile financial condition, and numerous headwinds will pressure earnings.

Ridiculous Compensation **Scheme To Line** Insiders' Pockets XPO insiders have aggressively reduced their ownership interest in the Company since coming public, and recently enacted a new compensation structure tied to "Adjusted Cash Flow Per Share" - defined in such a non-standard way that it is practically meaningless. Conveniently, it ignores any measure of capital efficiency, which is critical in the capital intensive transportation industry, and would expose XPO's poorly constructed roll-up. In our opinion, the Board is stacked with rubber-stamping Jacobs loyalists, none of which have requisite experience in the transportation and logistics industry. As noted above, the Board includes an audit committee member who abetted a notorious \$700m Ponzi scheme.

An Epic Wall St Stock **Promotion That Can End In Tears: Intermedia Target:** 30%-60% Downside Long-Term Target: \$0 XPO has recruited 19 brokers to cover it, with only 1 "Sell" opinion and an avg. fantasy price target of \$114 (implying 90% upside). No analyst has conducted a forensic look at XPO's earnings quality, or revealed its Board and management's connections to convicted felons. XPO promotes itself to investors as a "technology" company and how it uses "robots" for warehouse automation, but ignores its growing financial strain, precarious \$4.7 billion debt load, and inability to hit its cash flow target. Warren Buffett famously said, "Only when the tide rolls out do you know who as been swimming naked" - words of wisdom for XPO shareholders. A crisis of confidence in management and a loss of access to capital could wipe out shareholders. In the interim, we see 40% - 60% downside risk as the market reassess XPO's earnings quality, outlook, and sum-of-parts multiple.

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed; 12/23/21 Page: 155 of 315 PAGEID #: 4630 PO'S Investment Prospects

XPO's CEO Bradley Jacobs has lectured in the past about honesty. Our report will stress test XPO's financial statements and accounting to see if they give an honest view of its financial performance and outlook.

### hon-est

/'änəst/

free of deceit; truthful; sincere; candid; frank; open; forthright; straightforward; plain-speaking; upfront; aboveboard

**XPOLogistics** 



### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 156 of 315 PAGEID #: 4631 A Careful Look At XPO'S CEO Jacobs And His Business Associates Raises Multiple Red Flags

XPO's CEO Brad Jacobs Known Business Associates Include Two Convicted Felons, A Director Whose Firm Was Just Sanctioned By FINRA, And An Audit Committee Director With A Role Promoting A \$700M+ Ponzi Scheme

Jacobs Related Company	John Milne	Michael Nolan	G.C. Andersen	Adrian Kingshott	Jason Papastavrou / Oren Shaffer	Troy Cooper	Chris Brown
United Rentals (URI)	<ul><li>Founder</li><li>Chief Acquisition Officer</li><li>CFO (2003-2005)</li></ul>	CFO since inception through 2002	His firm's website says he was instrumental in the growth of United	<ul> <li>Former Goldman Sachs MD during a period it did business with URI</li> </ul>	Jason P:     Director since 2005     Currently on the Audit Committee	VP and Group Controller 1997-2009	United Rentals, VP and Assistant Controller 2005-2014
United Waste Systems (UWS)	Vice Chairman and Chief Acquisition Officer (1993-1997)	CFO since inception	Waste Systems and United Rentals • Served on UWS Board			• Division Controller 1996-1997	
XPO Logistics (XPO)			• Director (2011-16)	Audit Committee     Member	<ul> <li>Jason P: Past Audit Committee Chair</li> <li>Oren: Current Audit Committee Chair</li> </ul>	<ul><li>XPO President</li><li>COO 2014-2018</li><li>SVP of Operations 2011-2014</li></ul>	VP of Financial Reporting and Technical Accounting
Terex Corp	Terex aided and abetted the fraudulent accounting by URI for two year-end transactions that were undertaken to allow URI to meet its earnings forecasts. These fraudulent transactions also allowed Terex to prematurely recognize revenue from its sales to URI		<ul> <li>Joined the Terex Board in 1992</li> <li>Lead Director: 2006-2015</li> <li>Mysteriously left the Board in 2017</li> </ul>		Oren: Joined the Board in 2007 and sits on the Audit Committee and Chair of the Comp Committee		
Serious Concern / Association With Financial Disaster	Convicted Felon and architect of the URI / Terex fraud Recently worked on private placement transactions for G.C. Andersen, and sent back to jail in April 2018 for not paying restitution despite having the capacity to pay	Convicted Felon and co-conspirator in the URI / Terex accounting fraud	<ul> <li>Recently left XPO's         Board during a         period that         coincided with an         undisclosed FINRA         sanction of his firm</li> <li>Hired felon John         Milne to work on         private placement         transactions, during         a period that XPO         was in the market</li> </ul>	Undisclosed involvement in the \$700m+ Marc Drier Ponzi Scheme     Kingshott was an agent selling Drier's notes and court documents suggest he was aware and should have known it was a Ponzi scheme	<ul> <li>Jason served on the URI Board while Jacobs was Chairman</li> <li>XPO says he is independent</li> <li>Oren is currently 75 years old, does he have a mandatory retirement age?</li> </ul>	Long-time Jacobs associate who worked at defunct auditor Arthur Andersen (1991-1993)	Xerox, Corporate     Finance Manager     2002-2005     KPMG Senior Manager,     Assurance 1995-2002     SEC Charges KPMG     \$22M To Settle SEC     Litigation Relating To     Xerox Audits from     1997-2000

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#### Capital Structure And Valuation

XPO is more expensive than it appears given its highly "adjusted" Non-GAAP results, and analysts' inability to correctly account for the 10.2m shares that are freely convertible from the Series A Convertible Preferred stock (market value = \$615m). Our report will detail XPO's aggressive tactics to bolster reported Adjusted EBITDA and EPS, and will argue that XPO trades at a premium to the sum-of-the-parts of its acquisitions despite no evidence it has created tangible financial value from its levered (junk) acquisition spree.

\$ in millions, except per share figures

	Street	Spruce Point		Street Va	aluation	Spruce	Point Adj
Stock Price (12/12/18)	\$60.33	\$60.33	Valuation	2018E	2019E	2018E	2019E
Diluted Shares Outstanding	136.6	146.8 (1)	EV / Sales	0.7x	0.7x	0.9x	N/A
Market Capitalization	\$8,241.1	\$8,856.4	EV / Adj. EBITDA(R)	7.9x	7.0x	7.4x	N/A
\$697m ABL facility due Oct 2021 (L+margin)	\$0.0	\$0.0	Price / Adj. EPS	18.1x	14.6x	34.2x	N/A
Term Loan, L+2.50 due Oct 2025 (4.23%)	\$1,503.0	\$1,503.0					
\$408m European Trade Securitization due Oct 2020 (1.11%)	\$364.5	\$364.5	<b>Growth and Margins</b>				
Capital Leases	\$266.8	\$266.8	Sales Growth	9.0%	5.4%	9.0%	N/A
Total Secured Debt Outstanding	\$2,134.3	\$2,134.3	Adj EBITDA Margin	9.4%	10.2%	7.8%	N/A
4.000% Euro Private Placement, due 2020	\$13.9	\$13.9	Adj EPS Growth	72.2%	23.9%	N/A	N/A
6.500% Senior Notes, due 2022	\$1,200.0	\$1,200.0					
6.125% Senior Notes, due 2023	\$535.0	\$535.0	Credit Metrics				
6.700% Senior Debentures, due 2034	\$300.0	\$300.0	Net Debt / Adj. EBITDA(R)	2.4x	2.1x	2.8x	N/A
Asset financing (Euribor based)	\$51.5	\$51.5	EBITDA / Interest Expense	7.2x	8.6x	5.9x	N/A
Total Unsecured Debt	\$2,100.4	\$2,100.4					
Operating Leases	\$0.0	\$1,978.5 (2)	Credit Profile				
Total Debt Outstanding	\$4,234.7	\$6,213.2	Fixed Rate Debt	\$2,315.7	55%		
Plus: Noncontrolling Interest and Preferred Stock	\$449.3	\$469.9 (3)	Floating Rate Debt	\$1,919.0	45%		
Less: Cash and Equivalents	\$427.9	\$427.9 (4)	S&P / Moody's Rating	BB/Stable	Ba2/Stable		
Total Enterprise Value	\$12,497.2	\$15,111.6	Wtd Avg Debt Maturity	6 years			

Source: XPO financials, Bloomberg consensus estimates, and Spruce Point adjustments

- 1) Includes 10.2m incremental shares converted for the \$41m book value perpetual Series A Convertible Preferred Stock
- 2) Per new accounting rules FASB ASU 2016-02, Leases (Topic 842), XPO is likely to record \$1.9bn of operating leases on its balance sheet
- 3) Based on 13.75% of XPO's Europe's market value and reduced by \$41m for the assumed Series A Convertible Preferred Stock conversion
  - Per XPO's 10-K, includes \$53.3 of cash collateral for the Euro Trade Securitization Facility as of 12/31/17. XPO does not provide quarterly disclosure of collateral



### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 158 of 315 PAGEID #: 4633 Summary of XPO Financial & Accounting Concerns: Mirroring The United Rentals Fraud Scandal of 2008?

Concern	Evidence	Impact and Implication	URI Playbook
Non-Economic Value Destructive Roll-Up	<ul> <li>Seventeen acquisitions since Jacobs took control of XPO, \$6.1 billion of capital deployed, and generated just \$73m of cumulative adjusted free cash flow = a failed business strategy yielding a 1.2% return on capital investment</li> </ul>	<ul> <li>To continue its growth, XPO will be dependent on larger acquisitions and more external capital</li> <li>Rising interest rates and cost of capital will lower economic returns to the strategy</li> </ul>	YES
Dependent On Banks To Survive	<ul> <li>XPO has raised \$5 billion of debt and equity capital, and is resorting to increased asset sales and factoring of accounts receivables to bridge the financing gap</li> </ul>	<ul> <li>\$190m of financing costs to Wall Street, not including M&amp;A advisory fees</li> <li>Can create incentives to appease banks before shareholders (evidence: forward equity sale)</li> </ul>	YES
Growing Working Capital Crunch + Persistently Out of Cash	<ul> <li>Moving to more capital intensive businesses (trucking/warehouses)</li> <li>XPO has repeatedly reported bank overdrafts and stopped reporting quarterly details in current liabilities</li> <li>Working capital to sales ratio climbs every quarter, while difference between DSO and DPOs contracting &gt;&gt;&gt; Started factoring European accounts receivable in Q4'17</li> </ul>	<ul> <li>We believe XPO will be forced to continue to raise additional debt or equity capital</li> <li>A likely factor why XPO has failed to complete an acquisition in 2018 despite headlines in 2017 of its "\$8 billion" capacity for deals</li> </ul>	
Organic Revenue Growth Not Reliable	<ul> <li>Inability to reconcile XPO's historical stated organic growth, including calculation discrepancy in XPO's 2017 organic result</li> <li>Questionable Non-GAAP adjustment to FX impact</li> <li>Despite YTD quarterly avg organic growth of 10.8%, cash flow growth increased by just 3.2%</li> </ul>	<ul> <li>The CEO has stressed organic sales growth is one of the biggest factors that investors use to value XPO. This creates possible incentives for XPO to inflate this metric</li> </ul>	
Adj. EBITDA And Earnings Quality Concerns Make XPO More Levered Than It Appears	<ul> <li>XPO has repeatedly stretched out amortization assumptions</li> <li>Reports significantly increased non-operating pension gains</li> <li>Labels recurring M&amp;A and restructuring costs as EBITDA add-backs despite these being material costs of executing its roll-up strategy</li> <li>Includes 100% of XPO Europe as EBITDA despite owning 87%</li> <li>Dependence on operating leases will move on balance sheet in 2019</li> <li>In Q3'18, XPO shifted gains and losses on asset sales from "other income" into operating results, without providing \$ details</li> </ul>	<ul> <li>EBITDA is another important financial metric investors focus on. We estimate leverage of Net Debt/Adj EBITDAR is close to 3x</li> <li>URI case cited improper accounting for customer relationships, while we observe XPO consistently stretching out assumptions for customer relationship</li> </ul>	YES

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 159 of 315 PAGEID #: 4634 Summary of XPO Financial & Accounting Concerns: (Cont'd)

Concern	Evidence	Impact and Implication	URI Playbook
A/R Bad Debt Manipulation	<ul> <li>Post Q2'15 acquisitions, XPO's allowance for bad debt as a % of gross receivables materially declined despite Norbert carrying a higher % of allowances, and has been growing every quarter</li> <li>XPO just started disclosing bad debt in Q3'18 MD&amp;A</li> </ul>	<ul> <li>XPO could have flushed bad debts and labelled them as acquisition costs to be ignored. <u>URI case cited improper</u> <u>A/R reserve manipulation to boost net income</u></li> </ul>	YES
Phantom Income Potential Through Unaccountable M&A Earn-Out Liability	<ul> <li>XPO created a \$29m earn-out liability on June 30, 2015 despite not disclosing any earn-out compensation for the three acquisitions during that period: UX Logistics, ND, or BTT</li> <li>The liability was reduced to zero, but XPO did not disclose cash payments or share issuance to satisfy the liability</li> </ul>	<ul> <li>IF XPO followed standard earn-out accounting, it would reverse the liability and book \$29m of income.</li> <li>URI case cited improper acquisition reserves to offset expenses</li> </ul>	YES
Large Discrepancy Between Income Statement And Cash Tax Expense	<ul> <li>XPO has recognized a cumulative income tax benefit of \$132m since Jacob's joined, while paying \$182m in actual cash taxes</li> </ul>	<ul> <li>The discrepancy makes XPO's GAAP EPS less meaningful.         We estimate the cumulative earnings benefit has been         \$1.55/share</li> <li>The URI case cited improper tax accounting</li> </ul>	YES
Obscure Diluted Share Count	The perpetual preferred stock is convertible at \$7/share, making it deeply in-the-money. In Q1'16 XPO stopped giving a clear picture to investors about the sources of potentially diluted securities – including 10.2m shares from the preferred stock	Sell-side analysts have incorrectly modelled the share count, making XPO's valuation look cheaper than economic reality	
Unjust Insider Enrichment on Questionable Metrics	<ul> <li>XPO uses a non-standard definition of "adjusted cash flow per share" to earn significant bonus compensation</li> <li>The calculation ignores any measure of return on invested capital, which is common in the transportation/logistics industry</li> </ul>	XPO management enriching itself for non-economic value- added investing inc. special bonuses for completing deals (part of its job!). Employees and Unions (Teamsters) already calling out XPO management's greed	



### Case: 2:17-cv-00719-SDM-KAJ Doc #; 251-2 Filed: 12/23/21 Page: 160 of 315 PAGEID #: 4635. Approximately 47% Overstatement

In our opinion, XPO's highly "adjusted" EPS is a combination of aggressive accounting, unsustainable pension gains, and poor practices that underpay workers and appear to cut corners on worker safety.

Line Item	XPO Consensus 2018E	Spruce Point 2018E Normalized	Comment
Operating Income (EBIT)	\$800.0	\$800.0	Consensus estimate
Less: Pension Income		(\$76.8)	Not a sustainable component of continuing earnings. XPO has clearly tried to accelerate gains from the past few years, and claimed these gains as "operating" to inflate EBITDA. Changes in market returns assumptions will drive these gains lower over time
Less: Incremental wage pressures		(\$37.5)	There is ample evidence from <u>union</u> , <u>Senate inquiries</u> and lawsuits that XPO is underspending on wages and safety while US wage pressures increase. We conservatively estimate \$625m of wages and salaries at a 6% increase to direct operating expenses
Less: Transaction, Integration, Restructuring & Rebranding costs		(\$26.7)	Recurring costs of XPO's stated acquisition strategy that it conveniently tries to have investors ignore
Less: Bad Debt Expense		(\$25.0)	It strongly appears that XPO has been delaying bad debt expenses, and just started mentioning it in Q3'18. In 2017, \$24m was charged to expense, but the real amount is likely 2x based on Norbert's historical accrual
Less: Amortization Expense		(\$23.2)	XPO has consistently extended amortization periods to lower amortization expense
Less: Incremental Interest Expense		(\$1.2)	Incremental interest expense from rising interest rates applied to Term Loan
Total Spruce Point Adjustments		(\$190.4)	Our adjustments deducted from the Street's \$635.8m pre-tax income
Pro Forma Pre-Tax Cont. Income	\$635.8	\$445.4	We estimate XPO's normalized pre-tax profit is approximately -30% lower
Less: Taxes	(\$192.4)	(\$134.8)	30% implied effective tax rate
Adjusted Net Income	\$443.4	\$258.6	We deduct \$52m for minority interest
Diluted Shares	133.0	146.8	Analysts ignore the Series A Convertible Pfd. stock while XPO obscures the impact
Adj. Diluted EPS	\$3.33	\$1.76	We estimate continuing EPS approx47% below the street "adjusted" estimates

Source: XPO and Spruce Point estimates; Bloomberg consensus estimates



### Evidence of a Financial Scheme That Could Quickly Collapse

# SPRUCE POINT

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 162 of 315 PAGEID #: 4637. With Classic Signs of Strain

It's no surprise to Spruce Point that XPO recently walked back its free cash flow guidance for 2019E to \$650m (vs. Consensus est. of \$884m and implying virtually no YoY growth). However, it claims Adj EBITDA can grow 12-15%, which suggests that Adj. EBITDA is not a meaningful way to value XPO's business. (1,2)



- XPO 8-K with updated guidance
- We show both the traditional Free Cash Flow definition = CFO capex and XPO's aggressively defined Free Cash Flow (including asset sale)



#### Evidence of A Non-Economic Model

Seventeen acquisitions since Jacobs took control of XPO, \$6.1 billion of capital deployed, and it has generated \$73m of cumulative adjusted free cash flow = a failed business strategy yielding a 1.2% return on capital investment.



XPO's latest Annual Report added a new risk factor: "Our past acquisitions, as well as any acquisitions that we may complete in the future, may be unsuccessful or result in other risks or developments that adversely affect our financial condition and results."

#### **XPO Post Jacobs Roll-Up Strategy Implementation**

\$ in mm	2011	2012	2013	2014	2015	2016	2017	YTD 9m 2018
Cash from Operations		(\$24.2)	(\$66.3)	(\$21.3)	\$90.8	\$625.4	\$798.6	\$536.2
Less: Capital Expenditures		\$7.0	\$11.6	\$44.6	\$249.0	\$483.4	\$503.8	\$413.1
Free Cash Flow	Jacobs	(\$31.2)	(\$77.9)	(\$65.9)	(\$158.2)	\$142.0	\$294.8	\$123.1
Less: Noncontrolling Interest (1)	<u>completes</u> investment				(\$0.5)	\$15.5	\$20.0	\$22.8
Less: Tax Withhold: RSU/PRSU (2)	and forms XPO on					\$11.1	\$16.6	\$48.8
Less: Preferred Stock Dividend (3)	Sept 2011	\$3.0	\$3.0	\$2.9	\$2.8	\$2.9	\$2.9	\$2.1
Spruce Pt. Adj. Free Cash Flow		(\$34.2)	(\$80.9)	(\$68.8)	(\$160.5)	\$112.5	\$255.3	\$49.4
Cumulative Adj. FCF		(\$34.2)	(\$115.1)	(\$183.9)	(\$344.4)	(\$231.9)	\$23.4	\$72.8
Acquisition Cost (Inc. Minority Interest) Earn-Out Payments Rebranding Costs (4) Integration and Deal Costs (4) Total Acquisition Costs	\$0.0 \$0.5 \$0.0 \$1.0 \$1.5	\$57.2 \$0.5 \$0.0 <u>\$2.9</u> <b>\$60.6</b>	\$458.8 \$0.0 \$0.0 \$6.5 <b>\$465.3</b>	\$814.0 \$0.0 \$1.2 \$23.6 \$838.8	\$4,346.7 \$0.0 \$12.4 \$188.6 \$4,547.7	\$1.4 \$0.0 \$30.1 <u>\$73.1</u> <b>\$104.6</b>	\$0.0 \$0.0 \$18.4 \$59.9 \$78.3	\$0.0 \$0.5 \$2.9 <u>\$17.8</u> <b>\$20.7</b>
<b>Cumulative Acquisition Costs</b>	\$1.5	\$62.0	\$527.3	\$1,366.1	\$5,913.8	\$6,018.4	\$6,096.7	\$6,117.4

<sup>1)</sup> Represents the provision on the income statement that is a claim due to minority owners of XPO Logistics Europe SA. XPO's cash flow statement begins with Net Income pre-minority interest.

<sup>2)</sup> Cost associated with XPO's discretionary policy to compensate employees with restricted stock, presented as a "financing" cash flow, but operating in nature

<sup>3) &</sup>lt;u>Fixed and recurring payments</u> to Series A Preferred Stockholders akin to interest expense

<sup>)</sup> Recurring costs necessary to implement XPO's stated acquisition business strategy



#### Echo Logistics Roll-Up

We've been critical of Echo Global Logistics in the past, but its roll-up strategy including 21 companies is significantly better than XPO's. Since inception, Echo has spent \$521m for acquisitions, with cumulative free cash flow of \$166m = 32% return on investment. By year eight (on an apples-to-apples basis with XPO), Echo returned 37%.

								Where XPO Is today					
\$mm	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	YTD 2018
Operating Cash Flow	\$2.1	\$0.4	\$1.7	(\$5.6)	\$8.6	\$15.7	\$22.8	\$24.8	\$32.4	\$70.8	\$59.7	\$48.7	\$63.0
Less: Capital Expenditures	\$1.5	\$4.0	\$4.7	\$4.3	\$6.2	\$6.4	\$8.9	\$9.2	\$15.2	\$14.7	\$46.9	\$20.7	\$19.5
Free Cash Flow	\$0.6	(\$3.6)	(\$3.0)	(\$9.9)	\$2.4	\$9.4	\$13.9	\$15.6	\$17.2	\$56.1	\$12.9	\$28.0	\$43.5
Less: Tax Withheld / Stock	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.2	\$0.8	\$1.1	\$1.9	\$4.9	\$1.8	\$2.4
Less: Preferred Dividends	\$0.2	\$0.0	\$0.0	\$3.5	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Spruce Point Adj. FCF	\$0.3	(\$3.6)	(\$3.0)	(\$13.4)	\$2.4	\$9.4	\$13.7	\$14.7	\$16.1	\$54.2	\$8.0	\$26.2	\$41.1
Cumulative Adj. FCF	\$0.3	(\$3.2)	(\$6.2)	(\$19.6)	(\$17.2)	(\$7.8)	\$5.9	\$20.6	\$36.7	\$90.9	\$98.9	\$125.1	\$166.2
Acquisition Costs (1)	\$0.0	\$4.8	\$0.4	\$7.2	\$8.6	\$5.0	\$16.4	\$2.0	\$33.8	\$392.7	\$11.4	\$0.0	\$1.0
Plus: Deferred and Contingent Payments	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$1.6	\$5.2	\$3.6	\$4.9	\$20.4	\$1.5	\$0.2	\$0.6
Total Acquisition Costs	\$0.0	\$4.8	\$0.4	\$7.2	\$8.6	\$6.6	\$21.6	\$5.6	\$38.6	\$413.1	\$12.9	\$0.2	\$1.6
Cumulative Acq. Costs	\$0.0	\$4.8	\$5.2	\$12.5	\$21.1	\$27.6	\$49.2	\$54.8	\$93.4	\$506.5	\$519.5	\$519.7	\$521.2

<sup>1)</sup> Includes Command Transportation integration costs of \$2.3 and \$11.4m in 2015 and 2016 Source: ECHO SEC Filings

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#### XPO Collapses Absent Capital Support

Classic corporate financial schemes that collapsed were exposed for their dependency on external financing and an inability to generate sustained cash flow. Not surprisingly, we find that XPO is a capital raising machine, having raised \$5 billion of debt and equity capital, while paying out \$190m of financing costs to Wall Street (ex: M&A advisory fees). XPO has bridged the gap between \$6.1bn of acquisition costs and \$5bn of capital raising with \$817m of asset sales, and \$364m of factoring receivables through XPO Logistics Europe created in Oct 2017.

"A lot of frauds are in effect Ponzi schemes. And so when they can't raise more and more capital, they collapse"
-- Jim Chanos, <u>II Magazine</u>, Sept 2018

#### **XPO Entirely Dependent On External Financing**

\$mm	2012	2013	2014	2015	2016	2017	YTD 9m 2018	Cumulative
LT Debt Issuance	\$138.5		\$500.0	\$4,151.8	\$1,377.8	\$819.2	\$895.8	\$7,883.1
LT Debt Repayment					(\$1,889.2)	(\$1,386.6)	(\$1,225.4)	(\$4,501.2)
Revolver Borrowing		\$73.3	\$130.0					\$203.3
Revolver Repayment			(\$205.0)					(\$205.0)
ABL Issuance					\$360.0	\$995.0	\$925.0	\$2,280.0
ABL Repayment					(\$330.0)	(\$925.0)	(\$1,025.0)	(\$2,280.0)
Other LT Debt and Capital Leases				(\$1,215.6)	(\$151.4)	(\$106.4)	(\$84.7)	(\$1,558.1)
Debt Issuance Costs			(\$10.4)	(\$42.9)	(\$25.8)	(\$16.8)	(\$6.4)	(\$102.3)
Total Debt Flows	\$138.5	\$73.3	\$414.6	\$2,893.3	(\$658.6)	(\$620.6)	(\$520.7)	\$1,719.8
Common/Preferred Stock Issuance	\$144.9	\$253.6	\$1,131.3	\$1,260.0		\$287.6	\$348.5	\$3,425.9
Equity Issuance Costs	(\$8.0)	(\$14.1)	(\$33.9)	(\$31.9)				(\$87.9)
Total Equity Flows	\$136.9	\$239.5	\$1,097.4	\$1,228.1		\$287.6	\$348.5	\$3,338.0

Source: SEC Filings 16



#### Bank Overdrafts Are A Warning Sign

XPO has never explained the reason in its filings for bank overdrafts. Furthermore, it stopped providing overdraft details in its current liabilities at the end of 2016 when its Chief Accounting Officer and Chief Legal Officer resigned. (1)

Spruce Point Is
Not Aware of
Why Any
Healthy and
"Successful"
Company
Needs
To Regularly Tap
Bank Overdrafts

		Years Ended December 31,						
	-	2017	2016	2015				
Financing ac	ctivities							
Repu	urchase of debt	(1,386.6)	(1,889.2)	_				
Proc	eeds from issuance of long-term debt	819.2	1.377.8	4,151.8				
Repa	ayment of long-term debt and capital leases	(106.4)	(151.4)	(1,215.6)				
Proc	reeds from borrowings on ABL facility	995.0	360.0					
Repa	ayment of borrowings on ABL facility	(925.0)	(330.0)	=				
Payr	ment of debt issuance costs	(16.8)	(25.8)	(42.9)				
Payr	nent for tax withholdings for restricted shares	(16.6)	(11.1)	_				
Divi	dends paid	(6.6)	(5.4)	(2.8)				
Chai	nge in bank overdrafts	(2.8)	(16.5)	(12,3)				
Proc	eeds from common stock and preferred stock offerings	287.6	_	1,260.0				
Purc	hase of noncontrolling interests	<del>-</del>	(1.4)	(459.7)				
Payr	ment for equity issuance costs	=	_	(31.9)				
Othe	er	(7.4)	12.2	(1.7)				
Net cash (u	sed in) provided by financing activities	(366.4)	(680.8)	3,644.9				

Source: XPO's 2017 10-K

XPO Stopped
Providing
Additional
Balance Sheet
Disclosure After
FY 2016 When
Key Executives
Resigned

Other Current Liabilities					
Other current liabilities is comprised of the following:		De	cember 31,		
(In millions)		2016		2015	
Deferred revenue	S	47.3	S		62.4
Employee benefits		37.3			38.7
Book and bank overdrafts		11.0			29,5
Acquisition earn-out liability		_	×.		21.8
Income tax payable		27.4			
Other current liabilities		33.7			51.2
Total Other Current Liabilities	S	156.7	S		203.6

Source: XPO's 2016 10-K

Additional analysis on the mysterious earn-out liability here

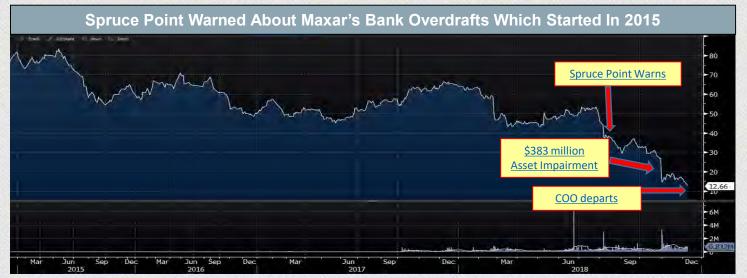
1) XPO's Chief Accounting Officer left Nov 2016 according to his LinkedIn biography. Chief Legal Officer resigned 2/12/17, 8-K

SPRUCE POINT

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 167 of 315 PAGEID #: 4642 Case Studies: Last Two Companies We Know Reported "Bank Overdrafts" Have Imploded



Source: MDC Partners 2016 10-K



Source: Maxar 2017 Annual Report

### Case: 2:17-cv-00719-SDM-KA1 Doc #; 251-2 Filed: 12/23/21 Page: 168 of 315 PAGEID #: 4643 Higher Capital Intensity Businesses

Investors appear blind to the fact that as XPO has moved away from its traditional third party asset-light logistics business, and into trucking and supply chain fulfillment, its capital requirements have increased. We don't view any of these as positive developments, especially as XPO is now fronting capital for customer warehouses.

Acquisitions Have Moved XPO Into More Capital and Asset Intensive Businesses





#### While A Customer Is Requiring XPO To Front Capital For Its Warehouse

**XPOLogistics** 

Salutione About Us Nova Work Fer Us Drive For Us Investe

#### HOME / NEWSROOM PRESS RELEASE



#### Nestlé and XPO Logistics Build a Digital Warehouse of the Future in the UK

Greenwich, Conn. | June 18, 2018

Nestlé, the world's largest food and drink company, and XPO Logistics, a leading global provicer of transport and logistics solutions, are co-creating a 638,000-square-foot distribution center at the new SEGRC East Miclands Gateway Logistics Park in Leicestershire, UK. The facility, a digital warehouse of the future will be occupied precominantly by Nestlé for its consumer packaged goods and will function as a testbed environment for XFO technology prototypes prior to global release.

The custom-designed distribution center, scheduled for completion in 2020, will feature advanced sorting systems and robotics alongside state-of-the-art automation co-developed with Swisslog Logistics Automation. The site's digital ecosystem will integrate predictive data and intelligent machines to deliver one of the most advanced distribution management centers in the world, giving consumers faster, more efficient access to KITKAT, MAGGI, NESCAFÉ and other much-loved Nestlé



The XPO-owned facility will be strategically ocated in the Midlands to benefit from direct access to the M1 motorway for road transport, the East Midlands Airport for cargo flights, and an onsite rail freight terminal with direct access to the major UK parts of Southampton, Felixstowe, London Gateway and the Channel Tunnel.

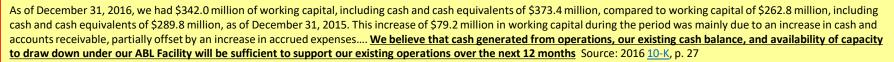
Source: XPO press release



#### Signs Suggesting A Recent Liquidity Crunch

Our analysis illustrates that XPO experienced a recent cash crunch. The spread between DSOs and DPOs contracted in Q4'17 and it implemented a trade receivable facility in the same quarter. The ratio of Working Capital to LTM Revenues also gapped higher into 2018, which suggests its business is become more capital intensive. XPO also stopped providing its working capital discussion in the 2017 10-K, and omitted the disclosure that it had sufficient ability operate in the next 12 months. In Q3 2017 (November) the CFO said working capital would be a source of \$50-\$60m of cash in Q4 2017; this proved to be false (1).

#### This Disclosure Was Dropped In the 2017 10-K



\$mm		2	016		2017				2018		
ŞIIIII	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Days Sales Outstanding (DSO)	48.4	55.7	51.1	57.3	57.5	59.0	60.7	59.8	59.2	58.6	58.9
Days Payables Outstanding (DPO)	25.3	33.3	28.1	31.1	32.1	37.0	41.7	51.8	47.5	47.6	48.6
Difference DSO – DPO	23.2	22.4	23.0	26.2	25.4	22.0	19.0	8.0	11.6	11.0	10.3
Euro Trade A/R Capacity							€ 270	€ 270	€ 350	€ 350	€ 350
Outstanding % Utilization								€ 253 94%	€ 322 92%	€ 312 89%	€ 314 90%
Trailing 12 Month Revenues (A)	\$10,466	\$12,934	\$14,285	\$14,619	\$14,613	\$14,690	\$14,864	\$15,381	\$16,033	\$16,636	\$17,084
Current Assets  Less: Cash and Equivalents  Adjusted Current Assets (B)	\$3,041 (\$279) \$2,667	\$3,106 (\$378) \$2,728	\$3,172 (\$360) \$2,811	\$3,074 (\$373) \$2,700	\$3,096 (\$342) \$2,967	\$3,258 (\$291) \$2,967	\$3,582 (\$473) \$3,109	\$3,588 (\$397) \$3,191	\$3,806 (\$380) \$3,426	\$3,713 (\$361) \$3,352	\$3,830 (\$428) \$3,402
Current Liabilities (C)	\$2,713	\$2,640	\$2,694	\$2,732	\$2,597	\$2,734	\$2,908	\$2,997.1	\$3,012	\$2,940	\$2,995
Working Capital (B – C) / (A) % of LTM Sales	0.5%	0.7%	0.8%	-0.2%	1.1%	1.6%	1.4%	1.3%	2.6%	2.5%	2.4%

Source: XPO, Bloomberg and Spruce Point analysis

<sup>1)</sup> CFO working capital forecast for Q4 2017 of \$50-\$60m on Q3 2017 earnings call



### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 170 of 315 PAGEID #: 4645 To The Banks' Interests Ahead of Shareholders

The proxy statement also illuminates the fact that prior equity awards were certified by a condition that "[XPO's] Stock Price at \$60 or above for 20 consecutive days prior to April 2, 2018" The \$60 price objective is oddly similar to the forward equity sales price of \$58.50 between XPO and JPM / Morgan Stanley in July 2017. Given our earlier conclusions that XPO is heavily dependent on external financing, this creates the appearance of preferential dealing between XPO and its bankers.

"In July 2017, the Company completed a registered underwritten offering of 11 million shares of its common stock at a public offering price of \$60.50 per share, plus up to an additional 1.65 million shares of its common stock pursuant to an option granted to the underwriters to purchase additional shares of the Company's common stock directly from the Company (the "Offering"). Of the 11 million shares of common stock, 5 million shares were offered directly by the Company and 6 million shares were offered in connection with forward sale agreements (the "Forward Sale Agreements")"

XPO 8-K: "On July 25, 2018, the Company settled each of the Forward Sale Agreements with the applicable Forward Counterparty, as a result of which the Company issued 6,000,000 shares of its common stock in the aggregate and received aggregate net cash proceeds equal to approximately \$351 million. Consistent with the Company's strategy to grow its business in part through acquisitions, the Company entered into the Forward Sale"

No acquisition ever occurred, and XPO sold stock at a significant discount to the market

From
The Bank's
Perspective At
Settlement
- Ootti Oili C

Forward Purchase	Shares Subject to	Market Price	Beneficial Gain
Price	Forward Sale	of XPO shares on Settlement	to Banks
(A)	(B)	(C)	(B)*(C-A)
\$58.50	6 million	\$101.3	

**From** The XPO's Shareholder Perspective At Settlement

Forward Sales Price	Shares Subject to Forward Sale	Proceeds To XPO	Shares Issued Had XPO Done An Equivalent \$351m raise on 7/25/18 (1)	Incremental Share Dilution To XPO Investors
\$58.50	6 million	\$351m	3.5 million	+2.5 million



House of Cards Accounting

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 172,01315 PAGEID #: 4647 To Management

Source: XPO 2018 Investor Presentation

#### 2017 was the sixth straight year that XPO met or exceeded its full year financial targets

XPO touts its ability to meet and exceed expectations in a consistent manner. Management is most likely to manipulate and inflate the metrics important for its compensation and its targets to appease investors and analysts. In the quote below, CEO Jacobs lays out exactly the three most important metrics. Note: EBITDA minus capex and interest expense is his bonus metric.

- Q Bascome Majors: "Just one final question on incentives. You've been very transparent on your long-term incentive plan and the FCF per share targets that you rolled out last year for that. I was wondering if you can talk about in the short-term plan or annual bonus, is there any different focus this year than last year? Just what metrics are being emphasized and why as we head into 2017 and 2018?"
- A CEO Bradley S. Jacobs: "It's real simple. It's EBITDA minus CapEx, minus interest expense. So, we're aligning the executive suite with shareholder interest. So, when we meet with our top shareholders, we usually – and they give us a QBR, quarterly business review, just like our customers give us a QBR, the main three metrics that they look at are, first how's your EBITDA growth going? Second, box checks very well there, very significant above average EBITDA growth. Second one they look at is, cash flow, and nice big ramp-up of cash flow this year from the previous year, nice expected FCF increase 2017 over 2016 and even continuing that in 2018 over 2017. And the third metric they look at is, organic revenue growth. They're looking for mid-single-digits organic revenue growth. So those are the three things that our owners, our shareholders are looking at, so that's what we want to incentivize our organization focused on as well."

Source: Q4 2016 Earnings Call



#### #1: Dubious EBITDA

Spruce Point has consistently warned about Non-GAAP financial presentation abuse. XPO's Adjusted EBITDA is particularly egregious, especially in light of its desire to give 100% credit for XPO Europe despite owning just 86.25%.

Reconciliation of Non-GAAP Measures XPO Logistics, Inc.

Consolidated Reconciliation of Net Income (Loss) to Adjusted EBITDA ex. Truckload

(Unaudited)

(In millions)

Key word: **UNAUDITED** 

			Twelv	e Months Er	ided D	ecember 31		
	_	2017	_	2016	_	2015		2014
Net income (loss) attributable to common shareholders Preferred stock beneficial conversion charge		312.4	\$	63.1	\$	(245.9) (52.0)	\$	(107.4) (40.9)
Distributed and undistributed net income		(27.8)		(5.9)		(2.8)		(2.9)
Noncontrolling interests		(20.0)		(15.5)		0.5		
Net income (loss)		360.2		84.5		(191.6)		(63.6)
Debt commitment fees		-		-		19.7		14.4
oss on conversion of convertible senior notes		0.5		0.2		10.0		5.5
oss on debt extinguishment		36.0		69.7				
Other interest expense		283.8		360.9		187.0		28.1
ncome tax (benefit) provision		(99.5)		22.3		(90.9)		(26.1)
Accelerated amortization of trade names		-				2.4		3.3
Depreciation & amortization expense		658.4		643.4		362.5		95.0
Unrealized loss (gain) on foreign currency option and								
orward contracts		49.4		(36.0)		2.5		
BITDA	\$	1,288.8	s	1,145.0	S	301.6	\$	56.6
Fransaction & integration costs		59.9		73.1		188.6		23.6
Rebranding costs		18.4		30.1		12.4		1.2
Gain on sale of intermodal equipment						(9.5)		
Adjusted EBITDA	\$	1,367.1	\$	1,248.2	\$	493.1	\$	81.4
Adjusted EBITDA divested NA Truckload business				80.1		18.8		
Adjusted EBITDA ex. Truckload	s	1,367.1	s	1,168.1	s	474.3	s	81.4

XPO giving itself 100% credit for something, despite only owning 86.25% and adds these items to EBITDA when they should be deducted (1)

Recurring costs necessary to implement its stated roll-up business strategy cannot simply be ignored

Refer to the "Non-GAAP Financial Measures" section on page 2 of this document Adjusted EBITDA was prepared assuming 100% ownership of XPO Logistics Europe



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 174 of 315 PAGEID #: 4649 Phantom Income Through An Unexplained Reserve For An Earn-Out?

XPO booked a mysterious "Acquisition Earn-Out Liability" of \$29m in Q2'15. XPO completed three deals in this time period, but made no disclosure about any earn-out components of the consideration. In subsequent periods, XPO did not recognize any payments through its cash flow statement to satisfy the earn-out, or equity issuance to satisfy the debt. Proper accounting for the earn-out would have resulted in XPO marking-to-market the changes in the value of the earn-out through the income statement.

Failure to achieve the earn-out and reducing its value to zero would have resulted in \$29m of phantom income. (1)

Date	Company Acquired	Consideration Paid According To XPO SEC Filings Does Not Indicate Earn-Out Incentive Compensation
Feb 9, 2015	UX Specialized Logistics	<ul> <li>The fair value of the total consideration paid under the UX Asset Purchase Agreement was \$58.9 million and consisted of \$58.1 million of cash paid at the time of closing, including an estimate of the working capital adjustment, and \$0.8 million of equity</li> </ul>
May 4, 2015	Bridge Terminal Transport, Inc	<ul> <li>The fair value of the total consideration paid under the BTT Stock Purchase Agreement was \$103.8 million and consisted of \$103.1 million of cash paid at the time of closing, including an estimate of the working capital adjustment, and \$0.7 million of equity</li> </ul>
June 9, 2015	Norbert Dentressangle	• Total cash consideration paid for the majority interest in the share capital of ND and settlement of the warrants was €1,437.0 million, or \$1,603.9 million, excluding acquired debt.

Warning: "From 1997 to 2000, during a period of enormous growth through acquisitions, URI engaged in improper accounting practices involving its valuation of acquired assets, use of acquisition reserves, and accounting for customer relationships."

Source: SEC vs United

Source: <u>SEC vs United</u> Rentals Complaint 2008

	As of	June 30, 2015	As of December 31, 2014		
Deferred revenue	S	48.8	\$	0.5	
Acquisition earnout liability		29.0		=	
Current portion of interest rate swap liability		4.6		J-	
Other current liabilities		21.6		6.2	
Total Other Current Liabilities	S	104,0	S	6,7	

Other Current Liabilities				
Other current liabilities is comprised of the following:		Decei	nber 31,	
(In millions)		2016		2015
Deferred revenue	S	47.3	S	62.4
Employee benefits		37.3		38.7
Book and bank overdrafts		11.0		29,5
Acquisition earn-out liability		_		21,8
Income tax payable		27.4		
Other current liabilities		33.7		51.2
Total Other Current Liabilities	S	156.7	S	203,6

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#### Low Quality Pension Income

Ever since acquiring Con-Way and ND, XPO has been reporting accelerated pension gains that have been increasing EBITDA, and now pre-tax income (1). These gains are non-operational and can be used to mask underlying weakness in XPO's core business. Not surprisingly, XPO hasn't drawn attention to pension gains in its earnings press releases, quarterly filings, conference calls or investor presentations until recently in Q2'18 (2).

"We have historically realized income, rather than expense, from these plans. We generated aggregate income from our U.S. and U.K. plans of \$44.4 million in 2017, \$27.5 million in 2016 and \$8.2 million in 2015. The plans have been generating income due to their funded status and since they do not allow for new plan participants or additional benefit accruals. The effects of the defined benefit pension plans on our operating results consist primarily of the net effect of the interest cost on plan obligations for the U.S. Plans and the U.K. Plan, and the expected return on plan assets. We estimate that the defined benefit pension plans will contribute annual pre-tax income in 2018 of \$32.4 million for the U.S. Plans and \$41.4 million for the U.K. Plan." XPO 10-K pp. 38 and 40

Year End	US Plan	UK Plan	Total Pre-Tax Income Gain	Location in Income Statement	XPO Adj. EBITDA	Gain as % of EBITDA	XPO GAAP Pre-Tax Profit	Pension Gain % of Pre-Tax Profit	Estimated Impact on EPS (3)
<u>2018E</u>	\$32.4 est	\$41.4 est	\$76.8 est	Other Income	\$1,600	4.8%	\$643.0	12.0%	\$0.43
2017	\$15.4 est	\$26.0 est	\$44.4 (actual)	Operating Income	\$1,367	3.2%	\$260.7	17.0%	
<u>2016</u>	\$9.3 est	\$14.1 est	\$27.5 (actual)	Operating Income	\$1,248	2.2%	\$106.8	25.7%	
2015	N/A	N/A	\$8.2 (actual)	Operating Income	\$493	1.7%	(\$282.5)	NM	

Source: XPO 10-K filings, Bloomberg 2018 consensus estimates. Note: US/UK estimated gains from previous year Annual Reports. XPO's total pre-tax gains exceeded estimates in both 2016/17

<sup>1.</sup> XPO adopted ASU 2017-07 on Jan 1, 2018 and reclassified the income from operating income to other expense (income) on the income statement

<sup>2.</sup> Q2'18 conference call: "Other income was \$30 million in the quarter versus \$20 million in the first quarter. The largest piece of this was due to our well-funded pension plans, where strong asset returns have outpaced expense."

<sup>3.</sup> Estimate based on 2018E income tax rate of 23.6% and 134.1 diluted shares. Previous years the effective tax rate was negative

## SPRUCE POINT

### Case: 2:17-cv-00719-SDM-KAJ Doc.#: 251-2 Filed: 12/23/21 Page: 176 of 315 PAGEID#: 4651 Allowance Manipulation

We analyzed XPO's allowance for doubtful accounts and find a worrisome fact that allowance reserves were depressed post the Q2 2015 acquisitions of ND, UX and BTT. ND was the material acquisition contributor, and its financials show a 2.4% allowance accrual vs. XPO's 1.9% pre-acquisition. On a go forward basis, it makes little sense why XPO's allowance dropped to 0.6% and has risen every single quarter in the last two and half years to a more normal level. Ironically, at Jacob's last company United Rentals, the SEC charged it with manipulating the accounts receivable acquisition reserves. Absent intentional manipulation, the rising allowance trend could indicate XPO's declining ability to collect from existing customers, or sales being recorded from lower quality new customers.

"Instead of eliminating the accounts receivable acquisition reserves after the allocation period (presumed to last no longer than one year), URI left the acquisition reserves on its books and commingled acquisition related accounts receivable reserves with operating accounts receivable reserves, enabling the company to offset improperly post-acquisition bad debt expense" SEC URI Complaint 2008

Ćua ua		2015			2016			2017				2018			
\$mm	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Accounts Receivable, Net (A)	\$504.7	\$1,673.2	\$1,647.2	\$2,266.4	\$2,265.1	\$2,266.4	\$2,338.4	\$2,313.0	\$2,338.0	\$2,481.9	\$2,601.0	\$2,725.3	\$2,858.4	\$2,855.9	\$2,914.9
Allowance For Doubtful Accounts (B)	\$10.0	\$10.1	\$8.9	\$16.9	\$20.3	\$21.3	\$26.2	\$26.3	\$24.3	\$36.2	\$39.2	\$42.4	\$44.8	\$45.9	\$51.9
Gross Receivables (A+B)=(C)	\$514.7	\$1,683.3	\$1,656.1	\$2,283.3	\$2,285.4	\$2,287.7	\$2,364.6	\$2,339.3	\$2,362.3	\$2,518.1	\$2,640.2	\$2,767.7	\$2,903.2	\$2,901.8	\$2,966.8
Allowance as % of Gross = (B / C)	1.9%	0.6%	0.5%	0.7%	0.9%	0.9%	1.1%	1.1%	1.0%	1.4%	1.5%	1.5%	1.5%	1.6%	1.7%

Source: XPO Financial Statements

**Deals Close** 

% Rises Every Single Quarter Since Closing Norbert Deal

Norbert's **Accounts** Pre-XPO Acquisition

31 Dec. 2014	31 Dec. 2013	31 Dec. 2012
908.010	795,593	637,198
(21,563)	(19.714)	(14,824)
886,447	775,879	622,374
87,046	63,606	64,994
8,183	11.134	1,470
50,615	48,583	43,575
18.930	18.420	19,102
164,774	141,743	129,141
38,558	17,621	12,079
	908,010 (21,563) 886,447 87,046 8,183 50,615 18,930 164,774	908.010 795.593 (21,563) (19,714) 886,447 775,879 87,046 63,606 8,183 11,134 50,615 48,583 18,930 18,420 164,774 141,743



Norbert's impairment provisions as a % of gross trade receivables were 2.4%

Source: XPO 8-K

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2-Filed: 12/23/21 Page: 177 of 315 PAGEID #: 4652 Suspicions of A/R Problems....

Lo and behold, XPO just now included a disclosure in its 3rd quarter 2018 10-Q about how it accounts for accounts receivables and allowance for bad debt, and added bad debt expense in its MD&A. This strongly suggests it has been covering up strain in its business, consistent with our analysis and observations on the prior slide.

#### **New Disclosure: Accounts Receivable**

Accounts receivable are recorded at the contractual amount. The Company records its allowance for doubtful accounts based upon its assessment of various factors. The Company considers historical collection experience, the age of the accounts receivable balances, credit quality of the Company's customers, any specific customer collection issues that have been identified, current economic conditions, and other factors that may affect the customers' ability to pay. The Company writes off accounts receivable balances once the receivables are no longer deemed collectible from the customer. The Company sells certain accounts receivable to unrelated financial institutions. The cost of participating in these programs was immaterial to the Company's results of operations for the nine months ended September 30, 2018 and 2017.

#### Q3 2018: Management Discussion and Analysis (MD&A)

SG&A for the third quarter of 2018 was \$447.2 million, or 10.3% of revenue, compared to \$399.6 million, or 10.3% of revenue, in the third quarter of 2017. SG&A as a percentage of revenue was flat in the third quarter primarily due to higher bad debt expense, lower professional fees and essentially flat employee compensation costs. SG&A for the first nine months of 2018 was \$1,351.7 million, or 10.5% of revenue, compared to \$1,213.4 million, or 10.8% of revenue, in the first nine months of 2017. The decrease in SG&A as a percentage of revenue in the nine-month period primarily reflects lower professional services and consulting costs and revenue growth of 15.2% for the first nine months of 2018...

Source: 10-Q, pp. 5 and 25 28



#### More Desperate Ways To Inflate EBITDA?

XPO made a subtle change in Q3 2018 to move gains and losses from property and equipment from "other expenses (income)" into the direct operating expense line item. XPO does not break-out these gains or losses, but in a worst case, it is improperly inflating EBITDA by running gains as a reduction to operating expenses. XPO's asset sales have increased 54% YoY, and it explicitly says any gains/loss below operating income are excluded form EBITDA. (1)

New Disclosure "Direct operating expenses are both fixed and variable expenses and consist of operating costs related to our contract logistics facilities, last mile warehousing facilities, LTL service centers and European LTL network. Direct operating costs consist mainly of personnel costs, facility and equipment expenses such as rent, equipment maintenance and repair expenses, costs of materials and supplies, information technology expenses, depreciation expense, utilities and other facility related costs and gains and losses on sales of property and equipment.

Source: Q3'18 10-Q, p. 25

Old Disclosure "Other expense (income) for the second quarter of 2018 was \$(30.2) million as compared to \$(12.5) million in the second quarter of 2017. Other expense (income) for the first six months of 2018 was \$(49.8) million as compared to \$(19.0) million in the first six months of 2017. Other expense (income) includes net periodic benefit income and gains and losses on sales of property and equipment."

Source: Q2'18 10-Q, p. 25

#### **Increasing Proceeds From Asset Sales**

Year	Q1'17	Q2'17	Q3′17	9M 2017	Q1′18	Q2′18	Q3′18	9M 2018
Asset Sales	\$20.5	\$21.7	\$17.4	\$59.6	\$10.4	\$51.5	\$30.2	\$91.7
YoY Growth					-49%	+135%	+74%	+54%

XPO uses aggressive financial presentation methods to bolster its cash flow and leverage by including proceeds from assets sales. This is another aggressive financial presentation tactic used at Jacob's United Rentals. (1) Even worse, XPO assumed that its forward stock sale transaction would settle, while blindly ignoring counterparty risk.

Consolidated Cash Flows Provided by Operating Activities to Free Cas	h Flow
(in millions)	

	Twelve Months Ended December 31,		
	2017	2016	
Cash flows provided by operating activities	\$ 798.6	\$ 625.4	
Payment for purchases of property and equipment	(503.8)	(483.4)	
Proceeds from sales of assets	79.1	68.9	
Free Cash Flow	\$ 373.9	\$ 210.9	

Non-standard and aggressive definition.
Assets sales are not guaranteed or recurring

Consolidated	Net Debt to	Adjusted	<b>EBITDA</b>	Ratio
(in millions)				

	December 31, 2017		
Total debt	\$4,521.2		
Less: Cash and cash equivalents	(396.9)		
Less: Potential proceeds from forward sale agreements	(350.0)		
Net Debt	\$3,774.3		
Adjusted EBITDA	\$1,367.1		
Net Debt to Adjusted EBITDA ratio	2.76		

Any counterparty credit risk on those forward contracts?

Source: XPO Proxy Statement, Annex A, filed April 18, 2018

1) URI <u>10-K</u>, p. 29

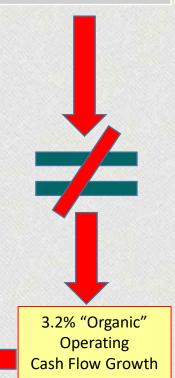
# SPRUCE POINT

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 180 of 315 PAGEID #: 4655 #3: Organic Revenue Growth Does Not Equal Organic Cash Flow

XPO has abandoned its attempt at expanding organic revenue disclosure post Q1'18. Through YTD Q3'18, organic quarterly revenue growth has averaged 10.8%, yet equates to just 3.2% YTD organic operating cash flow growth.

	Q1 2018	Q2 2018	Q3 2018	YTD Quarterly Average
Reported Organic Revenue Growth	11.00%	10.90%	10.50%	10.80%

	Nine Months Ended September 30,			
(In millions)		2018		2017
Operating activities				
Net income	\$	353.4	\$	153.1
Adjustments to reconcile net income to net cash from operating activities				
Depreciation and amortization		527.2		489.1
Stock compensation expense		64.1		50,1
Accretion of debt		11.1		14.5
Deferred tax expense (benefit)		14.3		(3.1)
Debt extinguishment loss		27.1		13,6
Unrealized (gain) loss on foreign currency option and forward contracts		(12.9)		49,9
Other		3.2		20.1
Changes in assets and liabilities:				
Accounts receivable		(262,0)		(199,8)
Other assets		(98.5)		(45,4)
Accounts payable		(4.1)		48.6
Accrued expenses and other liabilities		(86.7)		(71.2)
Net cash provided by operating activities		536.2		519,5



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 181 of 315 PAGEID #: 4656 CUESTIONABLE O'GANIC REVENUE Growth And FX Impacts

Non-GAAP metrics such as organic growth calculations are not audited and give management significant discretion to show results in the most glowing fashion. Total non-US revenues increased 6.1% between 2016 and 2017. Yet, it reported an FX hedge loss of \$57.6m in 2017 vs. a gain of \$40.3m in 2016. However, XPO reports to investors virtually no impact to organic revenue from currency fluctuations.

"We believe that total organic revenue is an important measure because it excludes the impact of the following items: foreign currency exchange rate fluctuations, acquisitions and divestitures, and fuel surcharges. Specifically, our total organic revenue reflects adjustments to (i) exclude revenue from our North American truckload unit, which was sold in October 2016, (ii) exclude the estimated revenue attributable to fuel, and (iii) apply a constant foreign exchange rate to both periods (based on average rates during the monthly periods)."

Consolidated Revenue to Total Organic Rever (in millions)	ue	Twelve	Month	s Ended De	cembe	r 31,
			2016			
Revenue		\$15	5,380.8	\$1	4,619.	4
North American Truckload			_		(431.9	0)
Fuel		(1	.441.0)	C	1.197.8	()
Foreign Exchange Rates			(10.0)		-	
Total Organic Revenue		\$13,929.8			2,989.	7
Organic Revenue Growth			7.2%			
Source: XPO Proxy Statement, Annex A, filed April 18, 2018						
			Years en	ded December 31,		
În millions)		2017		2016		2015
Inrealized foreign currency option and forward contracts losses (gains)	S	49.4	S	(39.7)	S	1.0
Realized foreign currency option and forward contracts losses (gains)		15.0		(3.8)		-
Foreign currency transaction and remeasurement (gains) losses		(6.8)		3.2		2.4
Remeasurement loss on cash held to purchase ND				-		31.7
oss on forward contract related to ND acquisition			<b>*</b>	-		9,7
Total foreign currency loss (gain)	a	57.6	S	(40.3)	S	44.8

Source: XPO 2017 10-K

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 182 of 315 PAGEID #: 4657 UESTIONABLE O'GANIC REVENUE Growth And FX Impacts (Cont'd)

If management can't seem to get its GAAP treatment of currency hedging correctly, do you really trust its ability to accurately present Non-GAAP foreign currency results on revenues? In Q3'18, XPO reclassified foreign currency cash flow from hedge from operations to investing, which now shows historical overstatement of results.

#### **Foreign Currency Option and Forward Contracts**

"In the third quarter of 2018, the Company changed its policy related to the cash flow presentation of foreign currency option contracts as the Company believes cash receipts and payments related to economic hedges should be classified based on the nature and purpose for which those derivatives were acquired and, given that the company did not elect to apply hedge accounting to these derivatives, we believe it is preferable to reflect these cash flows as Investing activities. Previously, these cash flows were reflected within Operating activities. Net cash used by investing activities for the nine months ended September 30, 2018 includes a reclassification of \$13 million of cash usage that had been reflected within Operating activities for the six months ended June 30, 2018. Prior years' impact were not material. With this change in presentation, all cash flows related to the foreign currency contracts are included in Investing activities on the Condensed Consolidated Statements of Cash Flows."

Source: XPO Q3 10-Q, p. 15





# Obvious Signs of Aggressive Accounting Assumptions Tied To Intangibles

XPO is increasing its amortization period assumptions, which lowers expenses and boosts earnings, while at the same time reducing disclosures when its Chief Accounting Officer resigned. XPO's footnotes reveal forward expectations for amortization expense, and actual results have come in materially lower. We estimate a \$0.12 - \$0.14 annual benefit.



"URI [United Rentals] engaged in improper accounting practices involving its valuation of acquired assets, use of acquisition reserves, and accounting for customer relationships." SEC URI Complaint 2008

#### **XPO Stretching Out Assumptions Every Year**

Year	Customer Relationships	Trade Names	Non-compete Agreements	Carrier Relationships	Other Intangibles
<u>2017</u>	14 years	3 years	7 years	Stopped Disclosing	Stopped Disclosing
<u>2016</u> (1,2)	13.4 years	2.9 years	4.6 years	Stopped Disclosing	Stopped Disclosing
<u>2015</u>	12.35 years	2.86 years	4.18 years	2.00 years	4.24 years
<u>2014</u>	10.29 years	2.21 years	6.12 years	2.00 years	4.24 years

#### Each Annual Report, XPO Offers Amortization Projections In Its Footnotes: Actual Results Well Below Estimates

Year	2016E	2017E	2018E	<b>2019</b> E
2015	\$201.3	\$187.4	\$179.0	\$172.7
2016		\$161.0	\$153.5	\$147.4
2017			\$160.4	\$154.0
Actual Amort.	\$174.4	\$164.0	N/A	N/A
Dil. EPS Impact	+\$0.14	+\$0.12	N/A	N/A

<sup>1)</sup> XPO stopped disclosing useful life estimations on quarterly basis in Q3'16 and now only reports it on an annual basis. They also stopped giving a quarterly breakdown related to computer software and capitalized internally-developed software as follows: "Depreciation of property and equipment and amortization of computer software was \$117.5 million and \$56.5 million for the three-month periods ended September 30, 2016 and 2015, respectively, and \$353.0 million and \$98.8 million for the nine-month periods ended September 30, 2016 and 2015, respectively. The net book value of capitalized internally-developed software totaled \$138.2 million and \$122.8 million as of September 30, 2016 and December 31, 2015, respectively."

<sup>2)</sup> XPO's Chief Accounting Officer left Nov 2016 according to his LinkedIn biography. Chief Legal Officer resigned 2/12/17, 8-K





### XPO Manipulating Tax Assumptions?

More evidence that XPO's income statement doesn't reflect true economic reality can be seen by a close examination of its income tax representations. XPO has recognized a cumulative income tax benefit of \$132m since Jacob's joined, while paying \$182m in actual cash taxes! We estimate the cumulative earnings benefit has been \$1.55 share.

Warning From URI: "In addition, the Company improperly accounted for other items that overstated net income, including the estimation and recording of self-insurance reserves, its recognition of equipment rental revenues, and its income tax accounting."

Source: SEC URI Complaint 2008

#### Material Divergence Between XPO's Income Statement Taxes and Cash Taxes Paid

\$ mm, except shares + per sh.	Location	2012	2013	2014	2015	2016	2017	Q1′18	Q2′18	Q3′18	Cumulative
Tax Benefit (Expense)(A)	Income St.	\$11.2	\$22.5	\$26.1	\$90.9	(\$22.3)	\$99.5	\$0.2	(\$54.2)	(\$41.0)	+\$132.9
Cash Taxes Paid (B)	Bottom of Cash Flow St.	(\$0.2)	(\$0.2)	(\$2.3)	(\$14.5)	(\$40.7)	(\$78.5)	(\$3.3)	(\$23.2)	(\$19.4)	(\$182.3)
Difference (A + B)		\$11.0	\$22.3	\$23.8	\$76.4	(\$63.0)	\$21.0	(\$3.1)	(\$77.4)	(\$60.4)	(\$49.4)
Impact to Dil. EPS Diluted Shares	Income St.	15.7	22.8	53.6	92.8	122.8	127.8	133.4	134.1	136.6	
per share		\$0.70	\$0.99	\$0.44	\$0.92	(\$0.51)	(\$1.33)	(\$0.02)	(\$0.58)	(\$0.55)	+\$1.55

Source: XPO Financial statements



### What's XPO's Real Share Count?

In our opinion, we do not believe the market is accurately evaluating XPO's diluted share count. We conducted a forensic review, and find that XPO has vastly reduced its disclosures about the potential impact of dilutive securities, an indication that XPO may not want investors to know. We believe XPO's Series A Convertible Preferred should be considered outstanding and dilutive considering its conversion price is \$7.00 per share, significantly below the current trading price.

#### **XPO Stopped Its Detailed Disclosure of Diluted Shares Q1'16**

# XPO Logistics, Inc. Consolidated Calculation of Diluted Weighted Shares Outstanding (Unaudited)

(Unaudited)		
	Three Months Er	ided March 31,
	2016	2015
Basic weighted-average common shares outstanding	109,628,094	78,825,639
Potentially Dilutive Securities:		
Shares underlying the conversion of preferred stock to common stock	10,412,143	10,476,430
Shares underlying the conversion of the convertible senior notes	3,180,806	5,171,353
Shares underlying warrants to purchase common stock	7,557,370	8,776,365
Shares underlying stock options to purchase common stock	570,684	633,392
Shares underlying restricted stock units and performance-based restricted stock units	1,607,032	1,025,632
	23,328,037	26,083 172
Diluted weighted-average common shares outstanding	132,956,131	104,908,811

Source: XPO Press Release Q1 2016

#### Fast Forward A Year....No Potential Impact

	+ (	Three Months Ended March 31,					
(In millions, except per share data)		2017		2016			
Basic earnings (loss) per common share							
Net income (loss) attributable to XPO	S	21.3	S	(22.5)			
Cumulative preferred dividends		(0.7)		(0.7)			
Non-cash allocation of undistributed earnings		(1.1)		-			
Net income (loss) allocable to common shares, basic	S	19.5	s	- (23.2)			
Basic weighted-average common shares		111.4		109.6			
Basic earnings (loss) per share	S	0.18	S	(0.21)			
Diluted earnings (loss) per common share							
Net income (loss) allocable to common shares, basic	S	19.5	S	(23.2)			
Interest from Convertible Senior Notes		0.3	7	_			
Actincome (loss) allocable to common shares, diluted	S	19.8	S	(23.2)			
Basic weighted-average con mon shares		111.4		109.6			
Dilutive effect of non-participating tock-based awards and Convertible Senior Notes		13.0		_			
Diluted weighted-average common shares		124.4		109.6			
Diluted earnings (1988) per chica	S	0.16	s	(0.21)			
Potential common shares excluded		10.3					

Certain shares were not included in the computation of diluted earnings per share because the effect was anti-dilutive

Source: XPO 10-Q Q1 2017



### Brokers Can't Get The Share Count Correct

It's hard to value XPO correctly when the smartest guys on Wall Street have no idea what XPO's true share count is, and conveniently ignore the deep in-the-money Series A Convertible Preferred Stock.

#### RF Lafferty, Initiation July 2018

	TR	2016A	2017A	2018E	2019E		
Revenue	\$	14,619	\$ 15,381	\$ 18,303	\$	20,134	
Operating Income	\$	488	\$ 632	\$ 879	\$	1,107	
Adj. EBITDA	\$	1,248	\$ 1,364	\$ 1,632	\$	1,893	
Net Income	\$	76	\$ 326	\$ 458	\$	624	
EPS	\$	0.62	\$ 2.55	\$ 3.36	\$	4.49	

#### JP Morgan, Nov 2018

86.99
00,99
01 Nov 18
116.27-68.58
11,882.83
Dec
137
130.00
31-Dec-19

Analyst's EPS implies 136.6m shares outstanding

#### **Jefferies Initiation, Oct 2018**

	2018E
Revenue	17,608
Operating income	840
margin (%)	4.8
Working capital	-261
Taxation	-125
Stock compensation + other	135
Depreciation & amortisation	690
Capex	-475
Free cash flow	804
change y/y (%)	44.9
Discounted free cash flow	741
PV projected free cash flow	8,791
Continuing value	12,896
Enterprise value	21,687
Net debt FY17	-4,124
Minority interest	-800
Equity value	16,721
Fully diluted nr of shares (m)	133.9
Equity value per share (\$)	124.9
% upside	9.4

Why is this analyst using FY17 net debt which is 10 months stale, and deducting minority interest at 2x book value?
Why ignoring the convertible preferred?



### Aggressive Lease Usage

XPO makes aggressive use of off-balance sheet leases relative to its larger and better credit worthy peers. Companies like FedEx and UPS use operating leases for more capital intensive assets such as airplanes and related facilities, whereas XPO has none. New accounting guidance could require XPO to recognize these lease on its balance sheet next year, though it claims to still be evaluating the issue.

"In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842). The core principle of Topic 842 is that a lessee should recognize the assets and liabilities that arise from leases, including operating leases. Under the new requirements, a lessee will recognize in the balance sheet a liability to make lease payments (the lease liability) and the right-of-use asset representing the right to the underlying asset for the lease term.... The standards are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating the effects these ASUs will have on its Condensed Consolidated Financial Statements and related disclosures. As of December 31, 2017, the Company reported \$1,978.5 million in operating lease obligations and will evaluate those contracts, as well as other existing arrangements, to determine if they qualify for lease accounting under the new standards. The Company does not plan to adopt the standards early"

\$ in mm	\$ in mm Company Reported Financials								As a 🤋	% of Total L	eases	
Company Moodys/S&P	Operating Lease	Capital Lease	Total Leases	Book Equity	Tang Assets	Sales	EBITDA	Total Assets	Tang. Assets	Book Equity	EBITDA	Sales
FedEx Corp Baa2/BBB	\$18,102	\$71	\$18,173	\$19,416	\$44,448	\$71,323	\$7,965	35%	41%	94%	228%	25%
XPO Ba2/BB	\$1,979	\$267	\$2,245	\$4,590	\$6,883	\$17,463	\$1,360	18%	33%	49%	165%	13%
United Parcel A1/A+	\$1,637	\$563	\$2,200	\$3,126	\$40,794	\$72,079	\$9,811	5%	5%	70%	22%	3%
Knight Swift	\$480	\$159	\$639	\$5,396	\$3,581	\$5,363	\$800	8%	18%	12%	80%	12%
J.B. Hunt Corp Baa1/BBB+	\$92	\$0	\$92	\$2,033	\$4,722	\$8,612	\$1,007	2%	2%	4%	9%	1%
Schneider	\$112	\$9	\$121	\$1,993	\$3,342	\$4,976	\$559	3%	4%	6%	22%	2%
C.H. Robinson Baa2/BBB+	\$283	\$0	\$283	\$1,518	\$3,107	\$16,760	\$868	6%	9%	18%	33%	2%
Expeditors	\$250	\$0	\$250	\$1,893	\$3,327	\$8,052	\$750	7%	8%	13%	33%	3%
					A	verage Am	ong Peers	11%	15%	33%	74%	8%

Source: Company financials and Bloomberg



### Do What I Say, Not What I Do.....

"If you can create a culture where people are motivated, inspired, incentivized, rewarded, to be honest with each other you can move mountains" -CEO Brad Jacobs Auto Logistics Conference Sept 21, 2016





Date	Source	Quotes About Jacobs and XPO Practices
Oct 2, 2018	Int'l Brotherhood of Teamsters	"The workers want a legally binding process to hold XPO accountable for the mistreatment," said Bill Hamilton, President of Local 107 in Philadelphia. "They are also concerned about the loss of work to subcontractors delivering goods directly to customers, known as last mile drivers."
Apr 16, 2018	International Transport Workers' Federation	"It is now clear that the problems in XPO are not limited to the American workforce. XPO Logistics is a rotten employer all over Europe, and this is a priority for unions in France, Spain, Belgium, the UK and across the EU. By standing together, we can stop the rot at XPO in Europe, and make the company change its ways in the US"
<u>April 11, 2018</u>	Int'l Brotherhood of Teamsters	"XPO's arrogance and repeated labor law violations has gone on for far too long. These drivers courageously took action and let the company know workers are no longer going to sit and watch the company violate their rights. We are proud of these workers and Local 769 is fully committed to fighting alongside them until justice is won at XPO," Josh Zivalich, president of Teamsters Local 769
Nov 20, 2017	Int'l Brotherhood of Teamsters	"XPO is mistreating us by refusing to come to the table more than a year after we voted to organize as Teamsters, which is completely unacceptable"
MAY 10, 2017	Int'l Brotherhood of Teamsters	"It is time for XPO CEO Bradley Jacobs to explain to company workers why he is entitled to a huge payout while he cuts the health care and retirement benefits of workers who are making this company so successful," said Monica Abraham, a quality control inspector for XPO in North Haven, Conn. who spoke at the shareholder meeting. "Workers shouldn't be punished while Jacobs gets rich off our backs!"
June 15, 2017	Int'l Brotherhood of Teamsters	"While Jacobs received \$20 million mega-equity, got approval for a \$110 million stock-bonus plan and has received a 481-percent bump in pay in recent years, workers are denied affordable health care, have no retirement security and the company is stomping on their federally protected rights to form their union," said Ernie Soehl, Director of the Teamsters National Freight Division.  "Workers have demanded a meeting with Jacobs, which is why Teamsters are here today, but Jacobs continues to refuse to meet over serious issues with workers."



CEO Jacob's Web of Associates Leads To Ridiculous Governance And Egregious Insider Enrichment Practices



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 190 of 315 PAGEID #: 4665 A Careful Look At XPO'S CEO Jacobs And His Business Associates Raises Multiple Red Flags

XPO's CEO Brad Jacobs Known Business Associates Include Two Convicted Felons, A Director Whose Firm Was Just Sanctioned By FINRA, And An Audit Committee Director With A Role Promoting A \$700M+ Ponzi Scheme

Jacobs Related Company	John Milne	Michael Nolan	G.C. Andersen	Adrian Kingshott	Jason Papastavrou / Oren Shaffer	Troy Cooper	Chris Brown
United Rentals (URI)	<ul><li>Founder</li><li>Chief Acquisition Officer</li><li>CFO (2003-2005)</li></ul>	CFO since inception through 2002	His firm's website says he was instrumental in the growth of United	<ul> <li>Former Goldman Sachs MD during a period it did business with URI</li> </ul>	Jason P:     Director since 2005     Currently on the Audit Committee	VP and Group Controller 1997-2009	United Rentals, VP and Assistant Controller 2005-2014
United Waste Systems (UWS)	Vice Chairman and Chief Acquisition Officer (1993-1997)	CFO since inception	Waste Systems and United Rentals • Served on UWS Board			• Division Controller 1996-1997	
XPO Logistics (XPO)			• Director (2011-16)	Audit Committee     Member	<ul> <li>Jason P: Past Audit Committee Chair</li> <li>Oren: Current Audit Committee Chair</li> </ul>	<ul><li>XPO President</li><li>COO 2014-2018</li><li>SVP of Operations 2011-2014</li></ul>	VP of Financial Reporting and Technical Accounting
Terex Corp	Terex aided and abetted the fraudulent accounting by URI for two year-end transactions that were undertaken to allow URI to meet its earnings forecasts. These fraudulent transactions also allowed Terex to prematurely recognize revenue from its sales to URI		<ul> <li>Joined the Terex Board in 1992</li> <li>Lead Director: 2006-2015</li> <li>Mysteriously left the Board in 2017</li> </ul>		Oren: Joined the Board in 2007 and sits on the Audit Committee and Chair of the Comp Committee		
Serious Concern / Association With Financial Disaster	Convicted Felon and architect of the URI / Terex fraud Recently worked on private placement transactions for G.C. Andersen, and sent back to jail in April 2018 for not paying restitution despite having the capacity to pay	Convicted Felon and co-conspirator in the URI / Terex accounting fraud	<ul> <li>Recently left XPO's         Board during a         period that         coincided with an         undisclosed FINRA         sanction of his firm</li> <li>Hired felon John         Milne to work on         private placement         transactions, during         a period that XPO         was in the market</li> </ul>	<ul> <li>Undisclosed involvement in the \$700m+ Marc Drier Ponzi Scheme</li> <li>Kingshott was an agent selling Drier's notes and court documents suggest he was aware and should have known it was a Ponzi scheme</li> </ul>	<ul> <li>Jason served on the URI Board while Jacobs was Chairman</li> <li>XPO says he is independent</li> <li>Oren is currently 75 years old, does he have a mandatory retirement age?</li> </ul>	Long-time Jacobs associate who worked at defunct auditor Arthur Andersen	<ul> <li>Xerox, Corporate         Finance Manager         2002-2005</li> <li>KPMG Senior Manager,         Assurance 1995-2002</li> <li>SEC Charges KPMG         \$22M To Settle SEC         Litigation Relating To         Xerox Audits from         1997-2000</li> </ul>

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 191 of 315 PAGEID #: 4666//CD DIVIGED WE FOIL: Beware of the Company You Keep....

History does not bode well for the subsequent owners of Jacob's led M&A hype machines. Two of Jacobs colleagues from United Waste Systems and United Rentals were charged by the SEC and Justice Dept. for financial fraud. John Milne was Vice Chairman, and Chief Acquisition officer of United Rentals since its acquisition in Sept 1997. He held the same role at Jacob's United Waste Systems from 1993 to 1997. He was sentenced to prison. Michael Nolan was also charged for his role at United Rentals, where he had been the CFO since its formation. He was also the CFO of United Waste Systems from 1994-1997

#### **United Waste Systems** In July 1989, Jacobs founded United Waste Systems in Greenwich, Jacob's Roll-up Connecticut, planning to consolidate small garbage collectors that had overlapping routes in rural areas. Jacobs served as chairman and CEO, and in 1992 he took the company public on the NASDAQ. In August 1997, after the company had made more than 200 acquisitions, Jacobs sold United Waste Systems to USA Waste Services Inc. (now known as Waste Management, Inc.) for \$2.5 billion "The Merger Agreement provides that, at the Closing, USA Waste will offer to enter into Consulting Agreements with each of Bradley S. Jacobs, John M. Milne and Michael J. Nolan" Deal Proxy Waste Management Founder, Five Other Former Top Officers Sued for Massive Fraud Financial Outcome Defendants Inflated Profits by \$1.7 Billion To Meet Earnings Targets; Defendants Reap Millions in Ill-Gotten Gains While Defrauded Investors Lose More Than 56 Billion FOR IMMEDIATE RELEASE 2002-44 Washington, D.C., March 26, 2002 — The Securities and Exchange Commission filed sult today against the founder and five other former top officers of Waste Management Inc., charging them with perpetrating a massive financial fraud lasting more than five years. The complaint, filed in U.S. District Court in Chicago, charges that defendants engaged in a systematic scheme to falsify and misrepresent Waste Management's

financial results between 1992 and 1997.

Source: SEC.gov

In Sept 1997, Jacobs formed United Rentals, serving as the new company's chairman and CEO. As with United Waste, Jacobs planned to grow United Rentals through a rollup strategy, consolidating small equipment rental dealers across North America. URI went public in Dec. 1997, and began trading on the New York Stock Exchange.

Jacobs stepped down from United Rentals in August 2007

**United Rentals** 

#### SEC Charges

#### United Rentals, Inc. to Pay \$14 Million to Settle Financial Fraud Charges

FOR IMMEDIATE RELEASE 2008-190

Washington, D.C., Sept. 8, 2008 - The Securities and Exchange Commission today charged one of the world's largest equipment fental companies, United Rentals, Inc. (URI), with engaging in fraudillent transactions to meet company earnings forecasts and analyst expectations. The SEC also charged the company with a broad range of other improper accounting practices.

Source: SEC.gov

#### John Milne To Jail



Source: Justice.gov

#### Michael Nolan Sentenced



Source: FBI

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 192 of 315 PAGEID #: 4667 Followed Jacobs To XPO Logistics

Professional	XPO Current Position	United Rentals / United Waste Past Association		
Troy Cooper	<ul><li>XPO President</li><li>COO 2014-2018</li><li>SVP of Operations 2011-2014</li></ul>	<ul> <li>United Rentals, VP and Group Controller 1997-2009</li> <li>United Waste Systems, Division Controller 1996-1997</li> <li>Arthur Andersen 1991-1993</li> </ul>		
Chris Brown	VP of Financial Reporting and Technical Accounting	<ul> <li>United Rentals, VP and Assistant Controller 2005-2014</li> <li>Xerox, Corporate Finance Manager 2002-2005</li> <li>KPMG Senior Manager, Assurance 1995-2002</li> <li>SEC Charges KPMG \$22M To Settle SEC Litigation Relating To Xerox Audits from 1997-2000</li> </ul>		
David Papa	Director, Corporate Accounting	<ul> <li>United Rentals, Director Accounting 2007-2016</li> <li>Manager Financial Reporting and Research 2004-2007</li> <li>KPMG Senior Accountant, 1991-1994 (Stamford CT)</li> </ul>		
Lisa Reynolds	Senior Manager, Finance Integration and Business Process	<ul> <li>United Rentals, Finance Manager 2006-2007</li> <li>United Rentals, Accounting Manager 2004-2006</li> </ul>		
Chris Duffell	<ul><li>VP of Finance</li><li>Director FP&amp;A 2012-2014</li></ul>	<ul> <li>United Rentals, Snr Manager 2005-2012</li> <li>United Rentals, District Controller 2005-2011</li> </ul>		

Source: LinkedIn



### Chief Accounting Officer Concerns

XPO is not shy about hiring Chief Accounting Officers with a history of working at companies known for aggressive accounting practices. Both of its CAO's worked at General Electric (GE), which is currently under investigation by the SEC for accounting practices at its Power division. In addition, the current CAO worked at defamed Arthur Andersen.

Chief Accounting
Officer
Lance Robinson
Sept 2015 –
Present

#### Chief Accounting Officer

Lance Robinson is responsible for the financial strategy, risk management, external financial reporting and control systems of XPO's global accounting and financial reporting operations. He has extensive senior financial experience, including 13 years with General Electric. While with GE, he served as global controller—mergers and acquisitions and as chief accounting officer for NBC Universal, and was a member of both the Business Development Council and the Controllership Leadership Council Earlier, he was a senior manager in the Transaction Advisory Services Group at Arthur Andersen. Mr. Robinson holds a bachelor of commerce degree from Natal University, South Africa, and an MBA degree from the Stern School of Business at New York University. He is a member of the AICPA Business Combinations Task Force, and is a certified public accountant (USA), a chartered accountant (RSA) and a chartered global management accountant.

Chief Accounting
Officer
Kent Renner
Dec 2011 –
Nov 2016 (1)

Source: XPO website and 8-K

BUCHANAN, Mich.--(BUSINESS WIRE)—XPO Logistics, Inc. (NYSE Amex: XPO) today announced that Kent Renner has been appointed senior vice president—chief accounting officer, effective January 5, 2012. He will be responsible for the company's external financial reporting, accounting operations, financial systems and internal controls.

Mr. Renner was most recently global controller with GE Energy Services, Inc., a \$16 billion revenue division of General Electric Company. Previously, he held positions as assistant corporate controller with The Home Depot, Inc., and senior manager with PricewaterhouseCoopers.

Mr. Renner holds a master's degree in accounting from the University of North Carolina at Chapel Hill, and degrees in economics and business management from North Carolina State University. He is a certified public accountant.

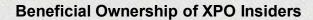
Source: XPO Press Release

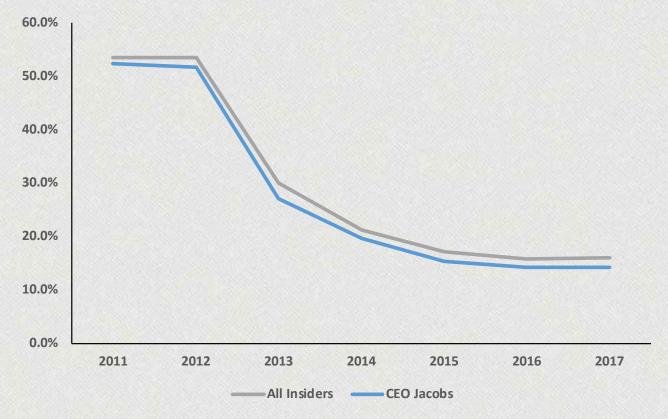
<sup>1)</sup> Renner's LinkedIn bio says he was employed at XPO until Nov 2016



## Jacobs Rapidly Diluting His Stake

We are not surprised to see XPO management starting to engage in more aggressive accounting and business practices now that it has less and less at risk in the venture. On the next slide, we will show how more of Jacob's economic are tied to a non-industry standard and aggressive metric inherently open to financial engineering.





Source: Annual Proxy Statement



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 195 of 315 PAGEID #: 4670 Flawed Wietrics Driving Insider Enrichment ICE POINT IGNORE Return on Capital Investment



XPO conveniently ignores return on capital as a key metric to compensate management, and has defined its own flawed and aggressive financial metrics. Each of XPO's peers consider return on capital for executive comp.

Company	Short Term Incentive	Long Term Incentive		
	Adjusted EBITDA (ex divestitures)     Organic Revenue Growth  Aggressive /  flowed definitions	The NEOs were granted PRSUs in 2016 with performance goals based on annual adjusted cash flow per share for the multi-year period from 2016 to 2019		
XPO Logistics	<ul> <li>Free Cash Flow</li> <li>Annual Total Shareholder Return</li> <li>Also evaluated and certified goal attainments associated with previously-awarded stock grants that had vesting events relevant to performance year 2017:</li> <li>Adjusted Free Cash Flow Per Share</li> <li>Adjusted EPS</li> <li>Stock Price at \$60 or above for 20 consecutive days prior to April 2, 2018</li> <li>Unusual condition</li> </ul>	<ul> <li>No Return on Capital Measure</li> <li>Adjusted Cash Flow Per Share = Made-Up Non-Standard Metric = Adjusted EBITDA (determined in accordance with the company's monthly operating reports and for external reporting purposes and adjusted for the impact of stock and phantom stock compensation) less any capital expenditures and interest divided by (ii) diluted shares outstanding.</li> </ul>		
UPS	Revenue Growth Adjusted EPS Growth Avg Daily Package Volume Growth	Revenue Growth  Operating Return on Invested Capital Relative Total Shareholder Return		
Knight-Swift	Adjusted EPS and growth  Return on Net Tangible Assets	Adjusted EPS CAGR Adjusted Trucking Operating Ratio		
FedEx	Adj Operating Income, but the Committee may adjust amounts paid based on <u>return on invested capital</u> , among other criteria	Three Year Adj EPS Growth		
Schneider	Revenue Growth EBIT Growth	5 year Compounded Net Income Growth <u>5 Year Average Return on Capital</u>		
Ryder	Earnings Before Tax (EBT) EPS from continuing operations	50% on Total Shareholder Return  50% Adjusted Return on Capital		
JB Hunt	Operating Income Annual Revenue Growth (ex: fuel surcharges) Annual EBT Growth	Performance goals must be based on one or more criteria approved by the MIP (e.g., revenue, operating income, <u>return on assets</u> )		

# Case: 2:17-cv-00719-SDM-KAJ, Doc. #: 251-2 Filed: 12/23/21 Page: 196 of 315 PAGEID #: 4671 Insider Enrichment (Cont'd)

In our opinion, XPO's "Adjusted Cash Flow Per Share" bonus metric is a meaningless target because it doesn't measure return on capital deployed. (1) XPO's egregious insider enrichment practices also extend to its Board approving special bonuses for completion of the ND acquisition. So in other words, management was paid for doing its job. (2)

#### **CEO Jacobs Compensation**

Year	Salary	Bonus	Stock	Option	Non-Equity	Other	Total
2011	\$154,212	\$162,265	\$464,000	\$1,111,998		\$25,000	\$1,917,475
2012	\$495,000		\$1,876,800			\$2,000	\$2,373,800
2013	\$495,000				\$495,000	\$2,000	\$992,000
2014	\$495,000		\$2,802,536		\$585,000	\$2,105	\$3,884,641
2015	\$495,000		\$2,948,108		\$2,325,000	\$3,614	\$5,771,722
2016	\$607,000	\$1,375,000	\$19,999,992			\$2,456	\$21,984,448
2017	\$625,000		<i>j</i>		\$750,000	\$9,021	\$1,384,021
Total	\$3,366,212	\$1,537,265	\$28,091,436	\$1,111,998	\$4,155,000	\$46,196	\$38,308,107

Source: XPO Proxy Statement

Largest component of Jacob's compensation is tied to a non-standard metric that imparts no measure of economic value creation. Even worse, XPO won't provide the exact detail of the calculation.

Year	Adj. Cash Flow / Share Target	Surpass Target According To Proxy?	Provide Exact Calculation To Investors
2016	\$2.93	YES	NO
2017	\$3.96	YES	NO
2018	\$5.38		
2019	\$6.39		

The metric is a defined as: Adjusted EBITDA (determined in accordance with the company's monthly operating reports and for external reporting purposes and adjusted for the impact of stock and phantom stock compensation) less any capital expenditures and interest divided by (ii) diluted shares outstanding.

Source: 8-K XPO's CFO and Chief Strategy Officer paid special bonuses for completing the ND deal



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed; 12/23/21 Page: 197 of 315 PAGEID #: 4672 Relevant Industry Experience



XPO's Board lacks experienced operating executives in the transportation and logistics industry. Furthermore, we are concerned that the Board lacks experience in the exact industries that XPO says are most relevant to its business (notably: retail, ecommerce, food/beverage, technology, and aerospace) (1)

			Comn	nittee	
Director	Work History	Audit	Acquisition	Nominating	Compensation
Adrian Kingshott	<ul><li>CEO of Adson LLC</li><li>Senior Advisor to Headwaters Bank</li></ul>	X	X		х
Gena Ashe	<ul> <li>Adtalem Global Education</li> <li>Legal roles BrightView Landscapes</li> <li>Catalina Marketing Corporation</li> <li>Public Broadcasting Service (PBS)</li> <li>Darden Restaurants, Inc.</li> <li>Lucent Technologies, Inc. and AT&amp;T</li> </ul>			Х	
AnnaMaria Desalva	<ul> <li>DuPont, CCO</li> <li>Head of Corporate Affairs, Pfizer</li> <li>Advisor to the U.S. FDA</li> <li>Hill &amp; Knowlton, healthcare</li> <li>Public Affairs, Bristol-Myers Squibb</li> </ul>				
Michael Jesselson	<ul> <li>CEO of Jesselson Capital since 1994</li> <li>Worked at Philipp Brothers and at its division, Salomon Brothers Inc</li> </ul>			Х	Х
Jason Papastavrou	<ul> <li>CEO ARIS Capital Management</li> <li>Co-Founder Empiric Asset Mgmt.</li> <li>HF Strategies at Bank of America</li> </ul>	Х	Х	Х	Х
Oren Shaffer	<ul> <li>Vice chairman and chief financial officer of (now CenturyLink)</li> <li>COO of Sorrento Networks, Inc.</li> <li>CFO of Ameritech Corporation</li> <li>Senior executive Goodyear Tire</li> </ul>	X			Х

1) XPO's <u>10-K</u>, p.3



despite warning signs

about an SEC charged

broker Kovachev

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 198 of 315 PAGEID #: 4673 Undisclosed Involvement In A Ponzi Scheme By XPO Audit Committee Member: Adrian Kingshott

regarding how Dreier came to our the françulent note program. These told investors that Solow

was allowing him, as a favor, to run the program with little oversight by Solow as a way to

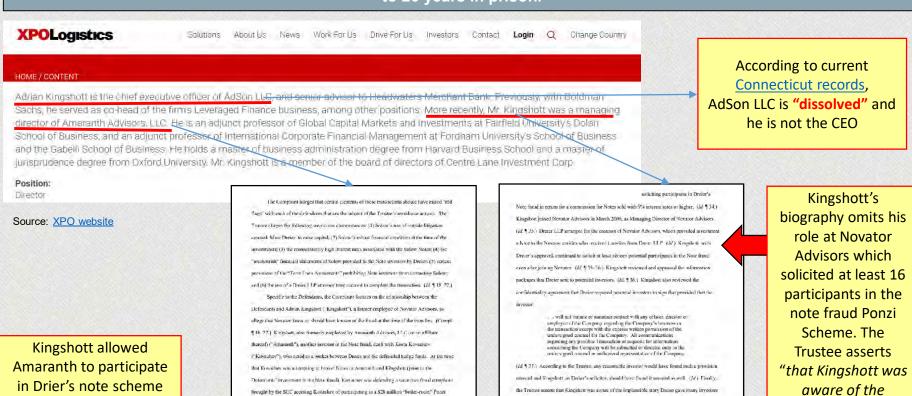
develop circuts. (4d. § 38.) The Trustee essens that Kingsbott should have questioned inc

legitimacy of the proposed transaction and it is "absurd for any company in Solow"s position to

entrust a pole program and the debt of the company, with limited operational oversight, to an

acturacy as a fever to help the acturacy descine business." (M/) The Trustee asserts that

XPO's Kingshott materially misrepresents his role as CEO as Adson LLC and omits his role as owner of Novator Credit Advisors LLC, an entity linked to the \$700m fraudulent note scheme by Marc Drier, who was sentenced to 20 years in prison.



Source: US Bankruptcy Court: Drier LLP (debtor), Novator Credit Management (defendant)

"Lawyer gets 20 Years in \$700 Million Fraud", NY Times, July 13, 2009

Adrian Kingshott as Sole Member owner of Novator Credit Advisors, LLC, Connecticut Business Records

Amaranth invested in the Note fraud (Id. § 32.)

scheme that marketed frice timeshares to the eldery. (M § 30.) According to the Trustee, this

information was public and available on the SEC's website during Kangalasti's and Amaranth'

the dings with Knowless, and Know host had actual notice of the SEC set argue against Knowless

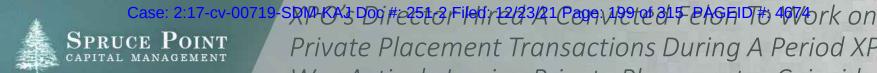
after energing Kraff in some ones or investigate Kovaches. (Id. ( 17-32.) The Trustee is energle

that even after having "actual knowledge" of Kovachev's involvement in a Ponzi schange

implausible story

Drier gave many

investors."



### Private Placement Transactions During A Period XPO Was Actively Issuing Private Placements...Coincidence?

Spruce Point has additional concerns about XPO's former Director G.C. Andersen, who served on the Board from 2011-2016 and claimed to be "Independent". Andersen also served on the Board of Jacob's previous venture United Waste Systems, and his website touts the firm's "roots fed the success of companies such as United Rental, United Waste, XPO Logistics". (1) We uncovered a recent FINRA action in June 2018 against Andersen's firm, which revealed he hired a known convicted felon dubbed "JM" to work on private placements at the same time XPO raised over \$3.6 billion through various private placement offerings. XPO would later disclose in 2016 that it evaluated "commercial transactions" with an entity Andersen was a director (presumably his own company).

"For Mr. Andersen, those relationships included ordinary course commercial transactions between our company and an entity for which Mr. Andersen is a director." Source: XPO 2016 Proxy Statement, p.18

#### FINANCIAL INDUSTRY REGULATORY AUTHORITY LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. 20160476246 03

- Department of Enforcement Financial Industry Regulatory Authority ("FINRA")
- G.C. Andersen Partners Capital, LLC BD No. 44631

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, G.C. Andersen Partners Capital, LLC ("Respondent," "GC Andersen," or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Respondent alleging violations based on the same factual findings described herein.

#### ACCEPTANCE AND CONSENT

Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

#### BACKGROUND

GC Andersen has been a member of FINRA since 1998. The Firm employs approximately 10 registered individuals, and maintains four offices with its main office in in New York, New York. The Firm provides M&A advisory, restructuring, and capital raising advisory services.

#### RELEVANT DISCIPLINARY HISTORY

GC Andersen has no relevant disciplinary history with the Securities and Exchange Commission, any state securities regulator, FINRA, or any other selfregulatory organization.

#### OVERVIEW

From March 2014 through August 2017 (the "Relevant Period"), GC Andersen associated with JM, an individual the Firm knew to be statutorily disqualified, in violation of FINRA By-Laws Article III, Section 3(b) and FINRA Rules 8311 (for the period from August 24, 2015 to August 2017) and 2010. Also, during the Relevant Period, GC Andersen permitted JM to engage in activities requiring registration, including investment banking activities in connection with several Firm private placements, even though he was not registered with FINRA in any capacity, in violation of NASD Membership and Registration Rules 1031 and 1032 and FINRA Rule 2010.

#### FACTS AND VIOLATIVE CONDUCT

In March 2014, JM began providing work for the Firm in connection with various Firm private placements. The Firm knew that JM was statutorily disqualified due to a felony conviction in 2009. Nevertheless, JM participated in the Firm's investment banking business until the Firm terminated its relationship with JM in

#### Association with a Statutorily Disqualified Individual

Article III, Section 3(b) of FINRA's By-Laws prohibits member firms from associating with an individual in any capacity if that individual has been statutorily disqualified. FINRA Rule 8311, effective August 24, 2015, likewise provides that "a member shall not allow [a disqualified] person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity."

Under FINRA's By-Laws, a "person is subject to a 'disqualification' with respect to membership, or association with a member, if such person is subject to any 'statutory disqualification' as such term is defined in Section 3(a)(39) of the [Exchange] Act." Among the statutorily disqualifying events in Section 3(a)(39) of the Exchange Act is any felony conviction in the prior ten years. In 2009, JM pleaded guilty to felony conspiracy. Thus, during the Relevant Period, JM was statutorily disqualified. A FINRA member may not associate with a disqualified person in any capacity unless and until approved in an eligibility proceeding triggered by the member's submission of an MC-400 Application

The FINRA By-Laws, at Article I, Section 1, define "[p]erson associated with a member" to include "a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member...." The By-Laws define "investment banking or securities business," in relevant part, as "purchasing securities and offering the same for sale as a dealer."

JM participated in GC Andersen's investment banking business by advising on investment banking transactions, creating marketing materials, contacting potential investors, revising and distributing transaction documents, and conducting due diligence on target companies. Additionally, JM was controlled by the Firm as the Firm and its registered persons: provided JM with work

FINRA By-Laws Article III. Section 4

G.C. Andersen's firm employed a known felon to assist in "private placements" from 2015-2017.



#### **XPO Private Placements During Same Time Period** (March 2014 - Aug 2017) Associated With "JM"

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Issue Date	Private Placement	Amount	Interest Rate	
8/25/14	Snr. Notes due 2019	\$500m	7.875%	
2/3/15	Snr. Notes due 2019	\$400m	7.875%	
5/29/15	Series C Convertible Perpetual Preferred	\$562m		
6/4/15	Snr Notes due 2022	\$1,600m	6.5%	
6/4/15	Snr Notes due 2021	EUR 500m	5.75%	
<u>8/25/16</u>	Snr Notes due 2023	\$535	6.125%	

XPO conducted no more private placements afterwards. JM's relationship was terminated with G.C. Andersen Aug '17



### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 200 of 315 PAGEID #: 4675 Former United Rentals Executive

John Milne, former President and CFO of United Rentals, was sentenced to 27 months in prison for conspiring to falsify books and records in March 2010 and was ordered to pay financial restitution. (1) Earlier this year in April 2018, Milne was ordered back to prison for failing to paying back the money, despite the court's belief he had capacity to do so. (2) In the interim, he acted as a financial consultant on various "private placement" transactions for XPO's Director G.C. Andersen.

that challenge and I really pride myself on how we were able to re-align the role and the definition of what the accountre-defined our team to be a partner to the field operations team, helping give them the tools to make the right decisions as a financial partner in the field, as opposed to being just a reporting entity. It was a change in definition of how business at United Rentals.

It was an unfortunate end that came about at United Rentals. There's not too much to elaborate on, it's all public information. I think the most important thing is what we accomplished while I was there and the phenomenal growth of the business we built and more importantly how I am using that total experience to bring perspective and knowledge to my clients today.

#### Let's go on to the present. You are working with G.C. Andersen Partners in what capacity?

I'm an independent consultant and I do a number of different things. Some management teams I'll be working with are not looking for financing, they're not looking to sell, they're not looking to buy, they're merely dealing with the issue of getting control on their growth. They're trying to get the house in order, putting in place information systems, HR systems, proper compensation plans, etc. So often times I'll be doing management type consulting. But a lot of times those sorts of roles are leading up to a capital markets transaction.

M&A advice that involve capital markets transactions, I have a relationship that dates back many years with G.C. Andersen. When there's a transaction where I need that capital market expertise or at least my client needs that capital market expertise, I'll often introduce them to G.C. Andersen and help them work together to get the deal done. and competitor. It really helped that I had seen Acme from

what's my strategy, how am I going to grow and differentiate me and my company from the landscape of national and ing and financial reporting group was at United Rentals. We regional and small private companies that I'm competing against day to day?" That's an important thing that every private company and every owner of a private company needs to be thinking about: what is my differentiation? An owner of a company needs to be able to explain that to we ran the business and I think it helped build a stronger anyone in a two-minute conversation. Because if they can't then they can be sure that their customers don't understand it, their employees don't understand it, their bankers, the Unfortunately your tenure at United Rentals didn't people who can provide them capital aren't understanding end so happily. Anything you'd like to share about it, and they could be heading their business into problems by getting distracted with things that are not core to their competency and success.

I would say that with these good times that we're all experiencing in the industry, it important for everyone to take pause and really try and find this answer. If they do, then they will be able to take advantage of the strength in the industry to execute on what they do well and build an even better and stronger business.

#### You played a major role in the \$109 million refinancing of Acme Lift. Can you tell us about that funding project?

I've known this company since the United Rentals days. At United Rentals we didn't always consider them our allies, since they often were providing big booms to small rental companies, but it's an amazing model and the team there has really built something unique. This business, with the new capital structure we helped put in place, is poised for some pretty significant growth over the next three to five

It was a complicated deal in that the capital markets hadn't seen this sort of rental business model before. So it And so when companies are looking for financing or was important to communicate effectively what the business did and how it differentiated itself in a sustainable business model from the rest of the rental industry. It just took a little more energy than normal to explain the nature of the business. I feel my history helped because when I was at United Rentals I had experienced Acme as both a customer

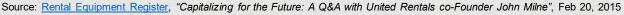


How was Milne earning income and spending on luxury services, and why would he rather go back to jail than to pay restitution? Is there more to the story?

"Since his release from prison in May 2012, MILNE has paid approximately \$500,000 of the \$5.25 million of disgorgement that was due. Chief Judge Hall found that, based on MILNE's income and expenditures on luxury services. personal items and travel, he had the ability to pay much more. The Court had previously continued the hearing on multiple occasions to provide MILNE the opportunity to make additional disgorgement payments, but he repeatedly failed to do so."

32 rer / february / 2015

www.rermag.com



- Former United Rentals President and CFO Sentenced to 27 Months in Prison for Falsifying Company Books, FBI.gov
- Former Rental Company Executive Sentenced to 2 Years in Prison for Violating Supervised Release, Dept. of Justice

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 201 of 315 PAGEID #: 4676 G.C. Andersen Also A Terex Director:

### Terex Has A Fraudulent History With Jacobs URI

If XPO didn't work with Andersen's firm to issue private placements, then it could have business dealings with Terex, where Andersen has long served as a Director according to his biography. Terex was also charged with fraud by the SEC for its dealings with Jacob's last firm United Rentals.

"For Mr. Andersen, those relationships included ordinary course commercial transactions between our company and <u>an entity for which Mr. Andersen</u> is a director." Source: XPO 2016 Proxy Statement, p.18

"G. Chris Andersen has served as a director of the company since September 2, 2011. Mr. Andersen is the founder and a managing partner of G.C.

Andersen Partners, LLC. Previously, Mr. Andersen served as vice chairman of PaineWebber, and as head of the Investment Banking Group at Drexel

Burnham Lambert Incorporated. Mr. Andersen is the lead director for Terex Corporation (Note: He Served On Terex's Board Since 1992). He is a member of the International Advisory Council of the Guanghua School of Management at Peking University; sits on the advisory board of the RAND Corporation's Center for Asia Pacific Policy; and is a director and member of the Executive Committee of Junior Achievement of New York. Mr. Andersen holds a master's degree from the Kellogg School of Management and is a chartered financial analyst." Source: XPO 2014 Proxy Statement

### Terex Charged With Fraudulent Dealing With United Rentals (Jacob's Last Firm)

#### SEC Charges Terex Corporation With Accounting Fraud

#### FOR IMMEDIATE RELEASE 2009-183

Washington, D.C., Aug. 12, 2009 — The Securities and Exchange Commission today charged Terex Corporation, a Westport, Conn.-based heavy equipment manufacturer, with accounting fraud for making material misstatements in its own financial reports to investors, as well as aiding and abetting a fraudulent accounting scheme at United Rentals, Inc. (URI), another Connecticut-based public company.

#### Additional Materials

- > Litigation Release No. 21177
- > SEC Complaint

Terex has agreed to settle the SEC's charges and pay a penalty of \$8 million. The SEC <u>previously charged URI</u> with fraud as well as officers of URI and Terex.

"Terex is being charged with helping United Rentals pull off a sophisticated accounting scheme," said Fredric D. Firestone, Associate Director in the SEC's Division of Enforcement. "These two public companies inflated yearend results in order to mislead investors during a period of industry recession."

Source: SEC website

### A Simple CFA Search Shows No Record Of Andersen Currently Holding The CFA Title

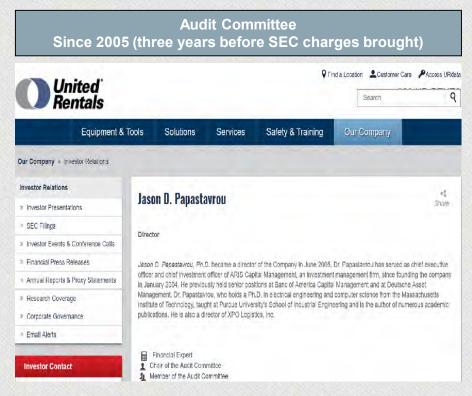
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Evic Claud Anderson, CEA	LOS AMBELES	CA		JSA
Niels E. Andersen, CFA	LONDON			UNITED KINGSOM
Pleger C. Andersen, GFA				
Monli C. Rndelsen, CFA	ZIONSWLLE	in.		USP
Bryan Paul Angersen. D.A	EMBLEWOOD	50		JSA
Mark V. Angersen, CPA	LEXINGTON	MA		194
Karen S Andarsen CFA	CHICAGO	- E		USA
Jonathan A. Ringersen, CFA	снюйзо	-L		USA
Systemen H. Andersen, CFA	CAICAGG	+L		JSA
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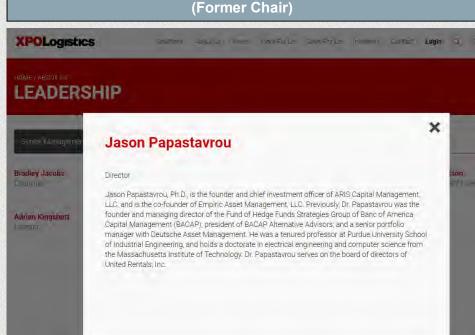
Source: CFA website



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/28/21 Page: 202 of 315 PAGEID#: 4677 Expert Another United Rental Ally

Though not implicated in the United Rentals scandal (the key elements of fraud occurred prior to his joining in 2005), it's worth considering that current XPO Audit Committee expert Jason Papastavrou also served for Jacobs at United Rentals on the Audit Committee. XPO's proxy statement calls Mr. Papastavrou "independent".





**Audit Committee Member Since 2011 Inception** 

Source: XPO website

# Case: 2:17-cv-00719-SDM-KAI Dog #: 251-2 Filed: 12/23/21 Page: 203 of 315 PAGEID #: 4678 Business Interests of The CEO's Wife

Investors should be concerned that an XPO employee is signing business filings for the candy business of its CEO's wife. Furthermore, Jacob's wife founded a company called "Liberty Cars, LLC" on November 3<sup>rd</sup>, 2017. While we don't know the exact nature of this business, or have any proof of self-dealing, we do know the formation came around the time of XPO's Q3'17 earnings, and during a period where its financials started showing strain. In addition, XPO increased its pace of asset sales in the subsequent guarters and a majority of its assets are vehicles.

#### Sugar and Plumm Holdings, Inc. 7 Principal Office in State of Formation (Foreign Corps Only): Changes 8 Attached hereto are the officers and directors of the corporation with their business and residence addresses XPO Legal 06/12/2019 10 Email Address Signing riina.tohvert@xpo.com 11. I hereby certify and state, under penalties of false statement, that all of the information set forth on this annual report is true. Thereby electronically sign this **Print Capacity** AUTHORIZED PERSON. Signature BITHA TOHVEET Report Officers/Directors FILING # 0006197977 FG 2 OF 2 Business ID . 1041327 VOL B-02547 PAGE 2924 FILED 06/12/2019 10:08 AM 1 Full Legal Name: LAMIA JACOBS CEO's PRES SEC DIR. Title(s): 350 ROUND HILL ROAD Residence Addr Wife CREENWIGH CT 06831 350 ROUND HILL ROAD Business Addr GREENWICH CT 06831

#### Formed when SECRETARY OF THE STATE OF CONNECTICUT XPO under stress, asset CERTIFICATE OF ORGANIZATION LIMITED LIABILITY COMPANY - DOMESTIC sales increase FILING PARTY (CONFIRMATION WILL BE SENT TO THIS ADDRESS): LIBERTY CARS LLC Mailing FILIDS #0005960584 EG 1 DF 2 350 ROUND HILL ROAD VOL 3402415 PAGE 2589 City: GREENWICH SILZE SF 11/63/2817 12:25 PM SECRETARY OF THE STATE OF CONNECTS State: Zip: 06831 1. NAME OF LIMITED LIABILITY COMPANY - REQUIRED: (MUST INCLUDE BUSINESS DESIGNATION LE LLC. L.L.C. ETC.) Z. LLC'S PRINCIPAL OFFICE ADDRESS - REQUIRED; (NO P.O. BOX) PROVIDE FULL ADDRESS. Street 350 ROUND HILL ROAD City: 06831 State 3. MAILING ADDRESS, REQUIRED - PROVIDE FULL ADDRESS (PO.BOX IS ACCEPTABLE) 350 ROUND HILL ROAD GREENWICH City: State: Zip: 06831 4. APPOINTMENT OF REGISTERED AGENT - REQUIRED: (COMPLETE A OR B NOT BOTH) PRINT OR TYPE FULL LEGAL NAME LAMIA JACOBS CONNECTICUT RESIDENCE ADDRESS (REQUIRED) P O BOX NOT ACCEPTABLE) 350 ROUND HILL ROAD. 350 ROUND HILL ROAD GREENWICH GREENWICH Zip: 06831 Zip: 06831 Country: Country CONNECTICUT MAILING ADDRESS (REQUIRED) City: GREENWICH State: 06881

Liberty Cars, LLC

Source: Connecticut State "Sugar & Plumm Holdings, Inc"

Source: Connecticut State "Liberty Cars, LLC" Note: investment made with Jacobs Private Equity email address



### Valuation And Downside



### 90% Implied Upside Is A Fantasy Target

Like any investment scheme, XPO needs to recruit more brokers to pump its stock to say "Buy"- but there aren't many left!

There are nearly as many analysts offering price targets on XPO as FedEx and UPS which are 5-7x larger companies.

Only two analysts are cautious, while a resounding majority are bullish and want investors to give XPO a premium multiple.

			<u> </u>
Analyst	Recent Action	Recommendation	Price Target
Jefferies	Recent initiation October	Buy	\$145
Thompson Davis		Buy	\$133
Barclays		Overweight	\$130
Seaport		Buy	\$130
JP Morgan		Overweight	\$130
Morgan Stanley	Up from \$125	Overweight	\$128
RF Lafferty	Recent Initiation July	Buy	\$125
Goldman Sachs	Down from \$126	Buy	\$124
Credit Suisse	Down from \$125	Outperform	\$119
Wells Fargo		Outperform	\$115
Oppenheimer	Up from \$122	Outperform	\$114
Cowen	Down from \$121	Outperform	\$112
KeyBanc	Down from \$115	Overweight	\$110
Susquehanna	Down from \$109	Positive	\$108
Raymond James	Down from \$110	Outperform	\$100
Stifel	Upgrade to Buy, D/G price from \$108	Buy	\$98
Stephens	Down from \$108	Equalweight	\$93
Bofa/ML	Down from \$108	NA	\$84
Morningstar		Sell	\$66
William Blair		Outperform	\$
1) Upside based on \$60.33 share price. Source: Blod	omberg	Average Price Target (implied upside)	\$114 (+89%)

# Case: 2:17-cv-00719-SDM-KAJ Doc.#: 251-2 Filed: 12/23/21 Page: 206 of 315, PAGEID #: 4681 Retail Investors

CEO Jacobs touts his ability to do a \$7 - \$8 billion deal that's accretive to EPS, and claims technology is its "secret sauce". Fast forward a year, and XPO hasn't acquired anything.

In Spruce Point's opinion, XPO's secret sauce is stock promotion and accounting gimmickry to embellish results.



Source: Cramer Mad Money - Sept 2017

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 207 of 315 PAGEID #: 4682 Many Fundamental Headwinds Will Weigh On Forward Earnings Potential

XPO's inability to deliver a game-changing acquisition in 2018 despite repeated promotions by management and brokers leaves more negative headwinds than positive tailwinds to future financial results.

Concern	Spruce Point's Assessment
Revenues	<ul> <li>Waning pressures on the US transportation sector and increased capacity resulting in lower pricing and margins</li> <li>Synchronized slowing in global growth from trade wars and tariffs</li> </ul>
Operating Costs	<ul> <li>Labor: XPO depends on significant hourly labor and truckers to operate its business. A general shortage of experienced truckers and labor shortages in the US is pressuring wages. Additionally, XPO has experienced work stoppages and pressure from the Teamsters Union</li> <li>Worker safety: XPO is under investigation from the US Senate related to safety conditions for its workers.</li> <li>Bad Debts: Appear set to increase now that XPO is finally subtlety disclosing in Q3'18 the impact</li> <li>Pension: XPO has remarkably increased pension income every year, but with equity and fixed income returns falling precipitously around the world, return expectations should start to decline</li> </ul>
Currencies	<ul> <li>XPO has significant exposure to foreign currencies, notably the Euro and the Pound <ul> <li>12% of revenues from the UK</li> <li>26% from Rest of Europe (France 13%)</li> </ul> </li> <li>Brexit overhang is pressuring both of the currencies. GBP was +10% in 2017, now -6% in 2018; Euro was +15% in 2017 and -5% in 2018</li> <li>XPO discloses a notional \$1.3bn cross-currency swap and the use of FX options</li> <li>We estimate XPO hedges just 26% hedge of total Euro and GBP exposure</li> </ul>
Interest Rates	<ul> <li>XPO's \$4.2 billion debt load (Weighted Avg Maturity: 6yrs) will eventually be refinanced at a higher interest rate</li> <li>It currently has a \$700m ABL (undrawn), \$1.5bn Term Loan, \$365m Euro A/R securitization facility, and \$52m assertinancing that are floating rate and will increase interest expense as rates rise</li> <li>We estimate 45% of XPO's debt outstanding is floating rate (it does not have any floating-to-fixed interest rate swaps as of 9/30/18)</li> </ul>



### XPO: A Collection of Acquired Junk

As we've <u>demonstrated</u>, XPO has extracted no value (as measured by excess cash flow) from 17 acquisitions, while its two recent large deals have saddled it with bad debts, higher pension liabilities, and moved it toward greater capital intensity businesses. We do not see how XPO can conceivably trade at a valuation higher than the sum of its acquired parts.

Ann Date	Acquisition	Enterprise Value	Revenues	EBITDA	EV / Revenues	EV/EBITDA
9/9/15	Con-way	\$3,016	\$5,744	\$510	0.5x	5.9x
4/8/15	Norbert Dentressangle	\$3,530	\$5,500	\$392	0.6x	9.1x
5/4/15	BTT	\$100	\$232	\$12.4	0.4x	8.1x
2/9/15	UX Logistics	\$59	\$113	\$8.2	0.5x	7.2x
7/29/14	New Breed	\$615	\$597	\$77	1.0x	8.0x
7/29/14	Atlantic Central	\$36.5	\$63	\$6.2	0.6x	5.9x
1/6/14	Pacer	\$279	\$980	\$22.4	0.3x	12.5x
12/11/13	NLM (1)	\$87	\$500	\$9.8	0.2x	8.9x
11/15/13	Optima Service	\$27	\$36	\$3.7	0.8x	7.3x
7/5/13	3PD	\$365	\$319		1.1x	
5/6/13	Interwide Logistics	\$4	\$28		0.1x	
2/26/13	Covered Logistics	\$11	\$27		0.4x	
2/12/13	East Coast Air	\$9	\$43		0.2x	
10/25/12	Turbo Logistics	\$50	\$124	\$6.9	0.4x	7.2x
10/1/12	BirdDog Logistics	\$1	\$7		0.1x	
8/3/12	Kelron Logistics	\$8	\$100	\$0.8	0.1x	10.0x
5/8/12	Continental Freight	\$4	\$22	\$0.9	0.2x	4.4x
Warning: The core of X	PO formed around tiny acquisitions	it paid virtually nothing for.		Wtd Average:	0.5x	7.4x



# Case: 2:17-cv-00719-SDM-KAJ Doc #; 251-2 Filed: 12/23/21 Page: 209 of 315 PAGEID #: 4684. Approximately 36% Overstatement

In our opinion, XPO's highly "adjusted" EPS is a combination of aggressive accounting, unsustainable pension gains, and poor practices that underpay workers and appear to cut corners on worker safety.

Line Item	XPO Consensus 2018E	Spruce Point 2018E Normalized	Comment
Operating Income (EBIT)	\$800.0	\$800.0	Consensus estimate
Less: Pension Income		(\$76.8)	Not a sustainable component of continuing earnings. XPO has clearly tried to accelerate gains from the past few years, and claimed these gains as "operating" to inflate EBITDA. Changes in market returns assumptions will drive these gains lower over time
Less: Incremental wage pressures	-	(\$37.5)	There is ample evidence from <u>union</u> , <u>Senate inquiries</u> and lawsuits that XPO is underspending on wages and safety while US wage pressures increase. We conservatively estimate \$625m of wages and salaries at a 6% increase to direct operating expenses
Less: Transaction, Integration, Restructuring & Rebranding costs		(\$26.7)	Recurring costs of XPO's stated acquisition strategy that it conveniently tries to have investors ignore
Less: Bad Debt Expense	+	(\$25.0)	It strongly appears that XPO has been delaying bad debt expenses, and just started mentioning it in Q3'18. In 2017, \$24m was charged to expense, but the real amount is likely 2x based on Norbert's historical accrual
Less: Amortization Expense		(\$23.2)	XPO has consistently extended amortization periods to lower amortization expense
Less: Incremental Interest Expense		(\$1.2)	Incremental interest expense from rising interest rates applied to Term Loan
Total Spruce Point Adjustments		(\$190.4)	Our adjustments deduced from the Street's \$635.8m pre-tax income
Pro Forma Pre-Tax Cont. Income	\$635.8	\$445.4	We estimate XPO's normalized pre-tax profit is approximately -30% lower
Less: Taxes	(\$192.4)	(\$134.8)	31% implied effective tax rate
Adjusted Net Income	\$443.4	\$310.6	
Diluted Shares	133.0	146.8	Analysts ignore the Series A Convertible Pfd. stock while XPO obscures the impact
Adj. Diluted EPS	\$3.33	\$2.12	We estimate continuing EPS approx36% below the street "adjusted" estimates

Source: XPO and Spruce Point estimates; Bloomberg consensus estimates



# Case: 2:17-cv-00719-SDM-KAJ Doc #; 251-2 Filed: 12/23/21 Page: 210 of 315 PAGEID #: 4685. Approximately 47% Overstatement

In our opinion, XPO's highly "adjusted" EPS is a combination of aggressive accounting, unsustainable pension gains, and poor practices that underpay workers and appear to cut corners on worker safety.

Line Item	XPO Consensus 2018E	Spruce Point 2018E Normalized	Comment
Operating Income (EBIT)	\$800.0	\$800.0	Consensus estimate
Less: Pension Income		(\$76.8)	Not a sustainable component of continuing earnings. XPO has clearly tried to accelerate gains from the past few years, and claimed these gains as "operating" to inflate EBITDA. Changes in market returns assumptions will drive these gains lower over time
Less: Incremental wage pressures		(\$37.5)	There is ample evidence from <u>union</u> , <u>Senate inquiries</u> and lawsuits that XPO is underspending on wages and safety while US wage pressures increase. We conservatively estimate \$625m of wages and salaries at a 6% increase to direct operating expenses
Less: Transaction, Integration, Restructuring & Rebranding costs		(\$26.7)	Recurring costs of XPO's stated acquisition strategy that it conveniently tries to have investors ignore
Less: Bad Debt Expense	-	(\$25.0)	It strongly appears that XPO has been delaying bad debt expenses, and just started mentioning it in Q3'18. In 2017, \$24m was charged to expense, but the real amount is likely 2x based on Norbert's historical accrual
Less: Amortization Expense		(\$23.2)	XPO has consistently extended amortization periods to lower amortization expense
Less: Incremental Interest Expense		(\$1.2)	Incremental interest expense from rising interest rates applied to Term Loan
Total Spruce Point Adjustments	-	(\$190.4)	Our adjustments deducted from the Street's \$635.8m pre-tax income
Pro Forma Pre-Tax Cont. Income	\$635.8	\$445.4	We estimate XPO's normalized pre-tax profit is approximately -30% lower
Less: Taxes	(\$192.4)	(\$134.8)	30% implied effective tax rate
Adjusted Net Income	\$443.4	\$258.6	We deduct \$52m for minority interest
Diluted Shares	133.0	146.8	Analysts ignore the Series A Convertible Pfd. stock while XPO obscures the impact
Adj. Diluted EPS	\$3.33	\$1.76	We estimate continuing EPS approx47% below the street "adjusted" estimates



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 211 of 315 PAGEID #: 4686 CE POINT XPO Adj. EBITDA Per Share VS. Spruce Point Reality: Approximately 20% Overstatement

We believe XPO's Adj. EBITDA is overstated as a result of aggressive add-backs. Furthermore, we believe XPO's true leverage is much higher as are result of \$1.9 billion of operating leases that XPO could soon have to recognize on its balance sheet from ASU 2016-02 adoption on in 2019. XPO has been guiet on the topic, and has continually said it is "evaluating" the issue and that it would not early adopt the standard.

\$ in mm	ХРО	Spruce Point Normalized	Comment		
LTM Adj. EBITDA 9/30/18	\$1,493.9	\$1,493.9	Assuming XPO's "Adj EBITDA" at face value		
Transaction/Integration Costs		(\$45.4)	Recurring cost, part of roll-up strategy		
Rebranding Costs		(\$4.4)	Recurring cost, roll-up strategy		
Gains From Asset Sales		???	XPO reclassified to operating in Q3'18; no details		
Wage and Safety Costs		(\$37.5)	Underspending and many lawsuits outstanding		
Bad Debt Expense		(\$25.0)	XPO has been under-reporting bad debts		
XPO Europe/Noncontrolling Interest		(\$33.2)	Not available to XPO, XPO incorrectly claims 100%		
Distributed/Undistributed Net Income		(\$34.2)	Not available to XPO, XPO incorrectly claims 100%		
Spruce Point Adj. EBITDA	\$1,493.9	\$1,314.1	-12.0% lower		
Diluted shares	132.3	146.8	Incremental 10.2m shares from Pfd. conversion		
Spruce Point Adj. EBITDA per share	\$11.29	\$8.95	-20.7% lower		
Total Debt Outstanding	\$4,234.7	\$4,234.7			
Plus: Operating Leases		\$1,978.6	Likely on balance sheet Jan 1, 2019		
Less: Cash and Equivalents	(\$427.9)	(\$427.9)			
Pro Forma Net Adjusted Debt	\$3,806.8	\$5,785.4			
EBITDAR		\$2,067.9	\$716m of rent exp. disclosed FY17		
Net Debt / Adj. EBITDA(R)	2.5x	2.8x			

Source: XPO and Spruce Point estimates



### Valuation of Public Comparables

XPO Logistics has morphed from a traditional third party (asset light) logistics provider into an integrated provider of transportation and logistics services (capital intensive). As a result, we believe it should receive a lower multiple more closer to larger integrated peers such as UPS and Fedex, albeit at a valuation discount to reflect its suspect accounting and low quality management and Board, with demonstrated associations to convicted felons and a Ponzi scheme. (1) We believe 2019E estimates are too high, and XPO will fail to deliver a material acquisition as it struggles with fundamental headwinds.

		Stock		'18E-	'19E				Enterpr	ise Valu	e		Net	
		Price	Ent.	Sales	EPS	P/	<u>E</u>	EBIT	DA	Sa	ales	Price/	Debt/	Dividend
	Name (Ticker)	12/12/2018	Value	Growth	Growth	2018E	2019E	2018E	2019E	2018E	2019E	Book	18E EBITDA	Yield
	Logistics													
	C.H. Robinson (CHRW)	\$88.58	\$13,224	5.4%	8.8%	19.3x	17.8x	13.4x	12.4x	0.8x	0.7x	NM	1.1x	2.3%
	Forward Air (FWRD)	\$69.34	\$1,736	7.3%	13.3%	23.0x	20.3x	11.1x	10.3x	1.3x	1.2x	3.8x	0.1x	1.2%
	HUB Group (HUBG)	\$40.19	\$1,422	-1.8%	14.6%	14.4x	12.5x	7.3x	6.2x	0.3x	0.4x	1.4x	1.4x	0.0%
	Echo Global (ECHO)	\$21.93	\$782	6.3%	3.6%	12.3x	11.9x	8.3x	7.9x	0.3x	0.3x	0.8x	2.0x	0.0%
			Max	7.3%	14.6%	23.0x	20.3x	13.4x	12.4x	1.3x	1.2x	3.8x	2.0x	2.3%
Shaded			Average	4.3%	10.1%	17.2x	15.6x	10.0x	9.2x	0.7x	0.7x	2.0x	1.1x	0.9%
companies	Integrated		Min	-1.8%	3.6%	12.3x	11.9x	7.3x	6.2x	0.3x	0.3x	0.8x	0.1x	0.0%
specifically	United Parcel (UPS)	\$101.70	\$105,875	6.0%	7.9%	14.1x	13.0x	10.9x	9.9x	1.5x	1.4x	NM	1.9x	3.6%
mentioned as	Fedex Corp (FDX)	\$188.76	\$64,316	5.5%	15.0%	10.8x	9.4x	7.0x	6.2x	0.9x	0.9x	2.6x	1.4x	1.4%
best peers for	J.B. Hunt Corp (JBHT)	\$98.68	\$11,835	11.4%	18.4%	18.2x	15.4x	9.4x	8.2x	1.4x	1.2x	5.3x	0.8x	1.0%
XPO's large	Knight Swift (KNX)	\$28.66	\$5,885	5.9%	14.4%	12.1x	10.6x	6.1x	5.5x	1.1x	1.0x	0.6x	0.9x	0.0%
acquisitions of	Schneider (SNDR)	\$20.30	\$3,610	7.5%	14.5%	13.3x	11.7x	5.4x	4.8x	0.7x	0.7x	1.7x	0.0x	0.0%
Pacer Int'l and			Max	11.4%	18.4%	18.2x	15.4x	10.9x	9.9x	1.5x	1.4x	5.3x	1.9x	3.6%
Con-Way (2)			Average	7.3%	14.0%	13.7x	12.0x	7.8x	6.9x	1.1x	1.0x	2.5x	1.0x	1.2%
	Truckers		Min	5.5%	7.9%	10.8x	9.4x	5.4x	4.8x	0.7x	0.7x	0.6x	0.0x	0.0%
	Old Dominion (ODFL)	\$130.85	\$10,565	8.2%	9.2%	18.2x	16.7x	10.4x	9.5x	2.6x	2.4x	4.1x	-0.1x	0.4%
	SAIA, Inc (SAIA)	\$55.36	\$1,543	8.2%	16.7%	14.2x	12.2x	6.4x	5.6x	0.9x	0.9x	2.2x	0.5x	0.0%
	ArcBest (ARCB)	\$36.53	\$976	5.5%	2.1%	9.6x	9.4x	4.1x	3.9x	0.3x	0.3x	1.4x	0.2x	0.9%
	YRC Worldwide (YRCW)	\$4.61	\$851	3.3%	NM	12.5x	5.0x	2.9x	2.8x	0.2x	0.2x	NM	2.3x	0.0%
	Covenant Transport (CVTI)	\$20.27	\$588	14.4%	19.7%	9.1x	7.6x	4.3x	3.8x	0.7x	0.6x	1.1x	1.6x	0.0%
			Max	14.4%	19.7%	18.2x	16.7x	10.4x	9.5x	2.6x	2.4x	4.1x	2.3x	0.9%
			Average	7.9%	11.9%	12.7x	10.2x	5.6x	5.1x	0.9x	0.9x	2.2x	0.9x	0.3%
			Min	3.3%	2.1%	9.1x	5.0x	2.9x	2.8x	0.2x	0.2x	1.1x	-0.1x	0.0%
	XPO (Street)	\$60.33	\$12,496	7.2%	28.0%	18.1x	14.1x	7.9x	6.9x	0.7x	0.7x	1.8x	2.4x	0.0%
	Spruce Pt. Adjusted		\$17,245			28.5x		9.5x						
	Share and the same								100000000		1200000	000000000000000000000000000000000000000	Contract of the Contract of th	

Highest industry earnings growth rate at risk of material disappointment absent acquisition

<sup>1)</sup> Stock promoters such as JP Morgan claim XPO should trade at a premium, "We use modestly above-peer multiples of 12.5x and 7.6x for each of XPO's respective parts in recognition of organic growth opportunities in a diverse number of large markets bolstered by high-quality management" Nov 1, 2018

<sup>2)</sup> Pacer and Con-Way Fairness Opinions. In addition, XPO's proxy statement benchmarks itself against UPS, Fedex, CH Robinson, and Swift



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 213 of 315 PAGEID #: 4688 Spruce Point Estimates 40% — 60% Intermediate Downside Risk, 100% Long-Term Downside

A crisis of confidence in management and a loss of access to capital could wipe out XPO shareholders. In the interim, we see 40% to 60% downside risk as the market reassess XPO's earnings and management quality.

\$ in millions, except per share amounts

Valuation	Low Multiple	High Multiple	Note					
Common Sense	<ol> <li>Six Simple Reasons XPO Is Uninvestible And A Potential Zero</li> <li>XPO's CEO has associated with felons that perpetuated a fraud at United Rentals / Terex</li> <li>Its Audit committee member has hidden his involvement in a \$700m Ponzi scheme</li> <li>There are striking similarities in the accounting playbook between United Rentals and XPO</li> <li>XPO has generated virtually no free cash flow since inception and is resorting to bank overdrafts, factoring receivables, and increased asset sales to bridge its capital needs</li> <li>XPO is now burdened with \$4.2bn of debt, and entirely dependent on external capital for growth. With interest rates and overall cost of capital increasing, will banks gleefully fund XPO's grand ambitions?</li> <li>US Senators and Teamsters already distrust XPO. How will they respond after reviewing our report?</li> </ol>							
P/E Multiple Spruce Point Adj. 18E EPS Price Target % Downside (1)	13.0x \$1.76 \$22.90 -62%	16.0x \$1.76 \$28.20 -53%	We use our normalized estimate for earnings from continuing operations.					
EV Multiple  LTM 2018 EBITDA  Enterprise Value  Less: Minority Interest (2)  Less: Debt At Book Value  Plus: Cash and Equiv.  Dil. Shares  Price Target  % Downside (1)	6.0x \$1,314 \$7,885 (\$511) (\$4,235) \$428 146.8 \$24.30sh -60%	7.5x \$1,314 \$9,856 (\$511) (\$4,235) \$428 146.8 \$37.73/sh -38%	XPO trades at approximately 8.7x our Adjusted EBITDA — a premium to the average multiple paid for its seventeen acquisitions of ~7.5x (a majority at peak cycle values). XPO should not trade above the sum of its parts given our belief it has not created any tangible value. ~70% of XPO's EBITDA contribution from Transportation with ~30% from Logistics. This mix is how we derive our reference multiple range					

- Downside based on \$60.33/share
- Based on 13.75% of XPO Europe's market value



Appendix: XPO's Technology Hype



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed; 12/23/21 Page: 215 of 315 PAGEID #: 4690 ... CE POINT EVERY COMPETITOR TOUTS Their Secretive "Proprietary" Technology

#### A XPO is just another logistics company touting its great "proprietary" technology in an attempt to bolster its valuation.

Company	Technology Claim	Source
XPO Logistics	Our <u>proprietary</u> , cloud-based technology gives us the agility to respond to customer needs, and is a major reason why customers trust us each day with 160,000 ground shipments and more than seven billion inventory units	<u>Website</u>
CH Robinson	C.H. Robinson's <u>Proprietary</u> Single Global Technology Platform: Navisphere technology platform gives you end to end shipment visibility and connects you with all your customers and service providers—anywhere in the world where you do business—so you can manage spend, manage risk and improve efficiency	<u>Website</u>
Total Quality Logistics	TQL TRAX is a free web portal and mobile app that gives you visibility and flexibility on every truckload and LTL shipment. Accessible through TQL.com or through a free, downloadable app, TQL TRAX integrates with our <u>proprietary</u> load management software in real-time, giving you the most recent information available about your shipment wherever you want it, 24/7/365.	<u>Website</u>
Hub Group	Our <u>proprietary</u> intermodal systems allow us to provide the most efficiency, security and transparency when executing your orders.	<u>Website</u>
UPS/Coyote	Coyote uses a suite of <u>proprietary</u> information technologies that provides market-leading transportation management applications	<u>Website</u>
Expeditors	These digital services are powered through the Company's <b>proprietary</b> , cloud based operating system which enables unsurpassed visibility and control across air, ocean and ground transportation providers	<u>Website</u>
Transplace	We employ industry-leading and <u>proprietary</u> technology solutions to improve operational execution and visibility.	<u>Website</u>
Echo Global Logistics	With integrated portals and customized applications, our <u>proprietary</u> technology delivers real-time connectivity across the supply chain.  Maximize your transportation spend with easy-to-use, scalable tools.	<u>Website</u>

# Case: 2:17-cv-00719-SDIA-KAJ-Doc #: 251-2 Filed: 12/23/21 Page: 216 of 315 PAGEID #: 4691 BY No Patent Protections

Despite having zero patents, there are signs of XPO embellishing its technology prowess with buzz words and greater use of the word "technology" in its SEC filings. Despite this, XPO can't get its IT professional count straight.

Year End	SEC 10-K Word Count "Technology"	IT Professionals	Annual Spend \$mm	Adding Tech Hype Buzzwords	Patents mentioned in the 10-K
2018				XPO Logistics Adds Augmented Reality to the Last Mile Experience	0
<u>2017</u>	77	1,700	\$450	"Automation and robotics; big data"  "We have built a highly scalable and integrated system on a cloudbased platform"  "We have developed predictive analytics that use machine learning to forecast demand"	0
<u>2016</u>	49	1,600	\$425		0
<u>2015</u>	52	1,500 or 1,000? (1)	\$400+ ( <u>Feb 16</u> <u>Presentation)</u> \$225m (PF <u>ND</u> <u>acquisition</u> )		0
<u>2014</u>	64	600	\$70 (May 2014)		0
<u>2013</u>	44				0
<u>2012</u>	27				0

<sup>1)</sup> XPO's 10-K filed Feb 29, 2016 said 1,600 but on Feb 24th just five days earlier at an investor presentation it said 1,000 professionals

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 217 of 315 PAGEID #: 4692 RODOTICS NEWS TO FEED THE XPO STOCK **Promotion Machine?**

XPO is trying very hard to position itself more like a technology company, when in reality it is just a trucking company and a logistics provider. It recently issued a press release that it would deploy 5,000 collaborative warehouse robots in North America. XPO was successful in generating lots of headlines with "news" associating itself with robotics.... mission accomplished!



**XPO** Logistics doubles down on **robots** in warehouses

Axios - Oct 3, 2018

XPO Logistics says these robots will reduce an employee's walking time in the warehouse and eliminate heavy lifting. Photo: XPO Logistics.

XPO to deploy 5000 GreyOrange robots for e-commerce fulfillment DC Velocity - Oct 3, 2018

XPO to deploy 5000 robots in its warehouses

Air Cargo News - Oct 3, 2018

XPO's largest robotic deployment to date will bring 5000 units to its ...

FreightWaves - Oct 3, 2018

XPO Logistics to Deploy 5000 Collaborative Warehouse Robots in ...

PostBulletin.com - Oct 3, 2018

From Reindeer to Robots, Automation Set to Deliver This Holiday ...

In-Depth - Wall Street Journal - Oct 3, 2018

Source: Google and XPO



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## Case: 2:17-cv-00719-SDM-KAJ Doc #: 351-2 Filed: 12/23/21 Page: 220 of 315 PAGEID #: 4695 if ying Problematic Roll-Up Strategies

#### Spruce Point Capital Is An Industry Recognized Research Activist Investment Firm Founded In 2009

- Founded by Ben Axler, a former investment banker with 18 years experience on Wall Street
- Ranked the #1 Short-Seller by Sumzero after a comprehensive study of 12,000 analyst recommendations dating to 2008 (March 2015)
- Ranked the #13 Most Influential FinTweeter on Twitter according to Sentieo (Dec 2016)

#### Spruce Point's Activist Successes Identifying Problematic Roll-Up Acquisition Strategies

	Echo Global Logistics (Nasdaq: ECHO)	CECO Environmental (Nasdaq: CECE)	LKQ Corp (Nasdaq: LKQ)	AMTEK (NYSE: AME)
Report	<u>9/8/16</u>	<u>2/13/17</u>	1/15/14 (Prescience Point)*	11/14/14
Market Cap	\$820 million	\$430 million	\$10.1 billion	\$12.3 billion
Company Promotion	An effective roll-up acquirer in the third party logistics sector capable of extracting significant operating leverage and \$200-\$300m of revenue synergies from the Command Transportation deal	An effective roll-up acquirer serving the environmental, energy, fluid handling and filtration industrial segments. Its largest PMFG acquisition would be a success and allow for rapid delivering of its balance sheet, and renewed organic growth opportunities	Best of breed recycled auto part distributor capable of effecting a roll-up strategy and producing consistent double digit revenue and EPS growth	Best of breed roll-up in the test and measurement equipment space with world class EBITDA margins and an ability to never miss Wall St estimates through any economic cycle
Our Criticism	Echo's management team has a history of value destruction, its roll-up strategy was ineffective, its organic growth was approaching zero, and its GAAP/Non-GAAP accounting was signaling financial strain. We argued it paid a peak multiple for Command and would miss its synergy targets. We estimated 50%-60% downside risk	A poorly constructed roll-up, we argued CECO was forestalling a goodwill impairment, its cash flow would fall significantly in 2017, and it could come under covenant pressure. CECO was misportraying its true leverage, while its end markets were contracting.  We estimated downside risk of 30%-60%	An ineffective roll-up by a management team with a history of financial failure (Waste Management / Discovery Zone). LKQ is caught in a gross margin squeeze being masked by relentless acquisitions, and aggressive inventory accounting open to significant mgmt judgement. Its move to Europe is an implicit acknowledgement of waning domestic growth	We argued AMETEK was not creating any value by delivering zero organic growth and that its financial statements showed signs of strain with aggressive accounting. We believed its premium valuation multiple could not be sustained as the quality of its acquisitions deteriorated
Successful Outcome	In <u>02'17</u> ECHO cut its FY17 revenue outlook and suspended longer-term guidance given changes in its end market and failure to hit synergy targets with Command. ECHO Sell-side brokers downgraded their recommendations from Buy to Hold. ECHO's shares fell to a 52 week low of \$13, or nearly 50%	CECO took a goodwill charge in Q4'16 as predicted, suspended its dividend, and charged its financial leverage presentation in its investors presentation - implicitly acknowledging our criticism. Q2'17 results were below expectations, it admitted continuing challenges in its end markets, and its YTD operating cash flow evaporated. CECO's shares were downgraded, and shares fell >40%	Gross margins have declined from over 47% to 39%. The Company's successive acquisitions in Europe and domestically have failed to boost its share price. LKQ's multiples have contracted significantly. Its CFO was replaced in Feb 2015 and its CEO stepped down in March 2017. Shares are down 22% since report inception.	By early 2016, AMETEK began guiding down sales and earnings expectations for multiple quarters. Its CEO and CFO abruptly retired. Its share price fell nearly 20% from our initial report date

Past performance is no guarantee of future performance. Short-selling involves a high degree of risk, including the risk of infinite loss potential. Please see Full Legal Disclaimer at the front of the presentation.

<sup>\*</sup> Report produced by Prescience Point of which Spruce Point's founder was a contributing author



## Executive Summary

SPRUCE POINT

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 222 of 315 PAGEID #: 4697 Spruce Point Estimates 40% — 60% Intermediate Downside Risk, 100% Long-Term Downside

Spruce Point has been following XPO Logistics (NYSE: XPO) for years, a transportation and logistics roll-up founded by Bradley Jacobs, cofounder of United Rentals (URI) which collapsed in an accounting scandal during his leadership. Based on our forensic investigation, we believe XPO appears to be executing a similar playbook to URI - resulting in financial irregularities that conveniently cover its growing financial strain and inability to complete additional acquisitions despite promises. Given its unreliable and dubious financials, \$4.7 bn debt burden, inability to generate sustaining free cash flow, and dependency on external capital and asset sales, we have a worst-case terminal price target of zero.

A Value Destructive Roll-Up, Covering Financial Strain and **Dependent On Financing For Survival**  XPO has completed 17 acquisitions since Jacobs took control in 2011 and deployed \$6.1 billion of capital. Yet by our calculations, the Company has generated \$73m of cumulative adjusted free cash flow in an expansionary economic period. In our view, this is indicative of a failed business strategy yielding a paltry 1.2% return on invested capital. XPO is dependent on external capital, asset sales, and factoring receivables to survive and is covering up a working capital crunch that can been seen by bank overdrafts - just like Maxar Technologies (MAXR). As credit conditions tighten, cost of capital increases, and XPO's business practices come under greater scrutiny (eq. U.S. Senate), its share price could swiftly collapse in Enron-style fashion.

Insider's Undisclosed **Association With Convicted Felons And** A Massive Ponzi Scheme

CEO Jacobs has surrounded himself with a web of associates from his United Waste Systems and United Rentals days. Two of his partners, Mike Nolan and John Milne, were convicted of accounting fraud. XPO's director G.C. Andersen recently employed Milne at his financial advisory firm during a time the company worked on private placements (potentially XPO's deals) and was sanctioned by FINRA. This wasn't disclosed to investors. XPO's audit committee director, Adrian Kingshott, has omitted from his bio his role in the distribution of note securities in the \$700m Marc Drier Ponzi scheme.

**Dubious Financial Presentation And** Aggressive **Accounting** 

In our opinion, XPO has used a nearly identical playbook from United Rentals leading up to its SEC investigation, executive felony convictions, and share price collapse. We find concrete evidence to suggest dubious tax accounting, under-reporting of bad debts, phantom income through unaccountable M&A earn-out labilities, and aggressive amortization assumptions: all designed to portray glowing "Non-GAAP" results. Additionally, we provide evidence that its "organic revenue growth" cannot be relied upon, its free cash flow does not reflect its fragile financial condition, and numerous headwinds will pressure earnings.

Ridiculous Compensation **Scheme To Line** Insiders' Pockets XPO insiders have aggressively reduced their ownership interest in the Company since coming public, and recently enacted a new compensation structure tied to "Adjusted Cash Flow Per Share" - defined in such a non-standard way that it is practically meaningless. Conveniently, it ignores any measure of capital efficiency, which is critical in the capital intensive transportation industry, and would expose XPO's poorly constructed roll-up. In our opinion, the Board is stacked with rubber-stamping Jacobs loyalists, none of which have requisite experience in the transportation and logistics industry. As noted above, the Board includes an audit committee member who abetted a notorious \$700m Ponzi scheme.

An Epic Wall St Stock **Promotion That Can End In Tears: Intermedia Target:** 30%-60% Downside Long-Term Target: \$0 XPO has recruited 19 brokers to cover it, with only 1 "Sell" opinion and an avg. fantasy price target of \$114 (implying 90% upside). No analyst has conducted a forensic look at XPO's earnings quality, or revealed its Board and management's connections to convicted felons. XPO promotes itself to investors as a "technology" company and how it uses "robots" for warehouse automation, but ignores its growing financial strain, precarious \$4.7 billion debt load, and inability to hit its cash flow target. Warren Buffett famously said, "Only when the tide rolls out do you know who as been swimming naked" - words of wisdom for XPO shareholders. A crisis of confidence in management and a loss of access to capital could wipe out shareholders. In the interim, we see 40% - 60% downside risk as the market reassess XPO's earnings quality, outlook, and sum-of-parts multiple.

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed; 12/23/21 Page: 223 of 315 PAGEID #: 4698 POINT'S HONEST OPINION OF XPO'S Investment Prospects

XPO's CEO Bradley Jacobs has lectured in the past about honesty. Our report will stress test XPO's financial statements and accounting to see if they give an honest view of its financial performance and outlook.

## hon-est

/'änəst/

free of deceit; truthful; sincere; candid; frank; open; forthright; straightforward; plain-speaking; upfront; aboveboard

**XPOLogistics** 



## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 224 of 315 PAGEID #: 4699 A Careful Look At XPO'S CEO Jacobs And His Business Associates Raises Multiple Red Flags

XPO's CEO Brad Jacobs Known Business Associates Include Two Convicted Felons, A Director Whose Firm Was Just Sanctioned By FINRA, And An Audit Committee Director With A Role Promoting A \$700M+ Ponzi Scheme

Jacobs Related Company	John Milne	Michael Nolan	G.C. Andersen	Adrian Kingshott	Jason Papastavrou / Oren Shaffer	Troy Cooper	Chris Brown
United Rentals (URI)	<ul><li>Founder</li><li>Chief Acquisition Officer</li><li>CFO (2003-2005)</li></ul>	CFO since inception through 2002	His firm's website says he was instrumental in the growth of United	<ul> <li>Former Goldman Sachs MD during a period it did business with URI</li> </ul>	Jason P:     Director since 2005     Currently on the Audit Committee	VP and Group Controller 1997-2009	United Rentals, VP and Assistant Controller 2005-2014
United Waste Systems (UWS)	Vice Chairman and Chief Acquisition Officer (1993-1997)	CFO since inception	Waste Systems and United Rentals • Served on UWS Board			• Division Controller 1996-1997	
XPO Logistics (XPO)			• Director (2011-16)	Audit Committee     Member	<ul> <li>Jason P: Past Audit Committee Chair</li> <li>Oren: Current Audit Committee Chair</li> </ul>	<ul><li>XPO President</li><li>COO 2014-2018</li><li>SVP of Operations 2011-2014</li></ul>	VP of Financial Reporting and Technical Accounting
Terex Corp	Terex aided and abetted the fraudulent accounting by URI for two year-end transactions that were undertaken to allow URI to meet its earnings forecasts. These fraudulent transactions also allowed Terex to prematurely recognize revenue from its sales to URI		<ul> <li>Joined the Terex Board in 1992</li> <li>Lead Director: 2006-2015</li> <li>Mysteriously left the Board in 2017</li> </ul>		Oren: Joined the Board in 2007 and sits on the Audit Committee and Chair of the Comp Committee		
Serious Concern / Association With Financial Disaster	Convicted Felon and architect of the URI / Terex fraud Recently worked on private placement transactions for G.C. Andersen, and sent back to jail in April 2018 for not paying restitution despite having the capacity to pay	Convicted Felon and co-conspirator in the URI / Terex accounting fraud	<ul> <li>Recently left XPO's         Board during a         period that         coincided with an         undisclosed FINRA         sanction of his firm</li> <li>Hired felon John         Milne to work on         private placement         transactions, during         a period that XPO         was in the market</li> </ul>	Undisclosed involvement in the \$700m+ Marc Drier Ponzi Scheme     Kingshott was an agent selling Drier's notes and court documents suggest he was aware and should have known it was a Ponzi scheme	<ul> <li>Jason served on the URI Board while Jacobs was Chairman</li> <li>XPO says he is independent</li> <li>Oren is currently 75 years old, does he have a mandatory retirement age?</li> </ul>	Long-time Jacobs associate who worked at defunct auditor Arthur Andersen (1991-1993)	<ul> <li>Xerox, Corporate Finance Manager 2002-2005</li> <li>KPMG Senior Manager, Assurance 1995-2002</li> <li>SEC Charges KPMG \$22M To Settle SEC Litigation Relating To Xerox Audits from 1997-2000</li> </ul>

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### Capital Structure And Valuation

XPO is more expensive than it appears given its highly "adjusted" Non-GAAP results, and analysts' inability to correctly account for the 10.2m shares that are freely convertible from the Series A Convertible Preferred stock (market value = \$615m). Our report will detail XPO's aggressive tactics to bolster reported Adjusted EBITDA and EPS, and will argue that XPO trades at a premium to the sum-of-the-parts of its acquisitions despite no evidence it has created tangible financial value from its levered (junk) acquisition spree.

\$ in millions, except per share figures

	Street	Spruce Point		Street Va	luation	Spruce	Point Adj
Stock Price (12/12/18)	\$60.33	\$60.33	Valuation	2018E	2019E	2018E	2019E
Diluted Shares Outstanding	136.6	146.8 (1)	EV / Sales	0.7x	0.7x	0.9x	N/A
Market Capitalization	\$8,241.1	\$8,856.4	EV / Adj. EBITDA(R)	7.9x	7.0x	7.4x	N/A
\$697m ABL facility due Oct 2021 (L+margin)	\$0.0	\$0.0	Price / Adj. EPS	18.1x	14.6x	34.2x	N/A
Term Loan, L+2.50 due Oct 2025 (4.23%)	\$1,503.0	\$1,503.0					
\$408m European Trade Securitization due Oct 2020 (1.11%)	\$364.5	\$364.5	<b>Growth and Margins</b>				
Capital Leases	\$266.8	\$266.8	Sales Growth	9.0%	5.4%	9.0%	N/A
Total Secured Debt Outstanding	\$2,134.3	\$2,134.3	Adj EBITDA Margin	9.4%	10.2%	7.8%	N/A
4.000% Euro Private Placement, due 2020	\$13.9	\$13.9	Adj EPS Growth	72.2%	23.9%	N/A	N/A
6.500% Senior Notes, due 2022	\$1,200.0	\$1,200.0					
6.125% Senior Notes, due 2023	\$535.0	\$535.0	Credit Metrics				
6.700% Senior Debentures, due 2034	\$300.0	\$300.0	Net Debt / Adj. EBITDA(R)	2.4x	2.1x	2.8x	N/A
Asset financing (Euribor based)	\$51.5	\$51.5	EBITDA / Interest Expense	7.2x	8.6x	5.9x	N/A
Total Unsecured Debt	\$2,100.4	\$2,100.4					
Operating Leases	\$0.0	\$1,978.5 (2)	Credit Profile				
Total Debt Outstanding	\$4,234.7	\$6,213.2	Fixed Rate Debt	\$2,315.7	55%		
Plus: Noncontrolling Interest and Preferred Stock	\$449.3	\$469.9 (3)	Floating Rate Debt	\$1,919.0	45%		
Less: Cash and Equivalents	\$427.9	\$427.9 (4)	S&P / Moody's Rating	BB/Stable	Ba2/Stable		
Total Enterprise Value	\$12,497.2	\$15,111.6	Wtd Avg Debt Maturity	6 years			

Source: XPO financials, Bloomberg consensus estimates, and Spruce Point adjustments

- 1) Includes 10.2m incremental shares converted for the \$41m book value perpetual Series A Convertible Preferred Stock
- 2) Per new accounting rules FASB ASU 2016-02, Leases (Topic 842), XPO is likely to record \$1.9bn of operating leases on its balance sheet
- 3) Based on 13.75% of XPO's Europe's market value and reduced by \$41m for the assumed Series A Convertible Preferred Stock conversion
  - Per XPO's 10-K, includes \$53.3 of cash collateral for the Euro Trade Securitization Facility as of 12/31/17. XPO does not provide quarterly disclosure of collateral



## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 226 of 315 PAGEID #: 4701 Summary of XPO Financial & Accounting Concerns: Mirroring The United Rentals Fraud Scandal of 2008?

Concern	Evidence	Impact and Implication	URI Playbook
Non-Economic Value Destructive Roll-Up	<ul> <li>Seventeen acquisitions since Jacobs took control of XPO, \$6.1 billion of capital deployed, and generated just \$73m of cumulative adjusted free cash flow = a failed business strategy yielding a 1.2% return on capital investment</li> </ul>	<ul> <li>To continue its growth, XPO will be dependent on larger acquisitions and more external capital</li> <li>Rising interest rates and cost of capital will lower economic returns to the strategy</li> </ul>	YES
Dependent On Banks To Survive	<ul> <li>XPO has raised \$5 billion of debt and equity capital, and is resorting to increased asset sales and factoring of accounts receivables to bridge the financing gap</li> </ul>	<ul> <li>\$190m of financing costs to Wall Street, not including M&amp;A advisory fees</li> <li>Can create incentives to appease banks before shareholders (evidence: forward equity sale)</li> </ul>	YES
Growing Working Capital Crunch + Persistently Out of Cash	<ul> <li>Moving to more capital intensive businesses (trucking/warehouses)</li> <li>XPO has repeatedly reported bank overdrafts and stopped reporting quarterly details in current liabilities</li> <li>Working capital to sales ratio climbs every quarter, while difference between DSO and DPOs contracting &gt;&gt;&gt; Started factoring European accounts receivable in Q4'17</li> </ul>	<ul> <li>We believe XPO will be forced to continue to raise additional debt or equity capital</li> <li>A likely factor why XPO has failed to complete an acquisition in 2018 despite headlines in 2017 of its "\$8 billion" capacity for deals</li> </ul>	
Organic Revenue Growth Not Reliable	<ul> <li>Inability to reconcile XPO's historical stated organic growth, including calculation discrepancy in XPO's 2017 organic result</li> <li>Questionable Non-GAAP adjustment to FX impact</li> <li>Despite YTD quarterly avg organic growth of 10.8%, cash flow growth increased by just 3.2%</li> </ul>	<ul> <li>The CEO has stressed organic sales growth is one of the biggest factors that investors use to value XPO. This creates possible incentives for XPO to inflate this metric</li> </ul>	
Adj. EBITDA And Earnings Quality Concerns Make XPO More Levered Than It Appears	<ul> <li>XPO has repeatedly stretched out amortization assumptions</li> <li>Reports significantly increased non-operating pension gains</li> <li>Labels recurring M&amp;A and restructuring costs as EBITDA add-backs despite these being material costs of executing its roll-up strategy</li> <li>Includes 100% of XPO Europe as EBITDA despite owning 87%</li> <li>Dependence on operating leases will move on balance sheet in 2019</li> <li>In Q3'18, XPO shifted gains and losses on asset sales from "other income" into operating results, without providing \$ details</li> </ul>	<ul> <li>EBITDA is another important financial metric investors focus on. We estimate leverage of Net Debt/Adj EBITDAR is close to 3x</li> <li>URI case cited improper accounting for customer relationships, while we observe XPO consistently stretching out assumptions for customer relationship</li> </ul>	YES

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 227 of 315 PAGEID #: 4702 Summary of XPO Financial & Accounting Concerns: (Cont'd)

Concern	Evidence	Impact and Implication	URI Playbook
A/R Bad Debt Manipulation	<ul> <li>Post Q2'15 acquisitions, XPO's allowance for bad debt as a % of gross receivables materially declined despite Norbert carrying a higher % of allowances, and has been growing every quarter</li> <li>XPO just started disclosing bad debt in Q3'18 MD&amp;A</li> </ul>	<ul> <li>XPO could have flushed bad debts and labelled them as acquisition costs to be ignored. <u>URI case cited improper</u> <u>A/R reserve manipulation to boost net income</u></li> </ul>	YES
Phantom Income Potential Through Unaccountable M&A Earn-Out Liability	<ul> <li>XPO created a \$29m earn-out liability on June 30, 2015 despite not disclosing any earn-out compensation for the three acquisitions during that period: UX Logistics, ND, or BTT</li> <li>The liability was reduced to zero, but XPO did not disclose cash payments or share issuance to satisfy the liability</li> </ul>	<ul> <li>IF XPO followed standard earn-out accounting, it would reverse the liability and book \$29m of income.</li> <li>URI case cited improper acquisition reserves to offset expenses</li> </ul>	YES
Large Discrepancy Between Income Statement And Cash Tax Expense	<ul> <li>XPO has recognized a cumulative income tax benefit of \$132m since Jacob's joined, while paying \$182m in actual cash taxes</li> </ul>	<ul> <li>The discrepancy makes XPO's GAAP EPS less meaningful.         We estimate the cumulative earnings benefit has been         \$1.55/share</li> <li>The URI case cited improper tax accounting</li> </ul>	YES
Obscure Diluted Share Count	The perpetual preferred stock is convertible at \$7/share, making it deeply in-the-money. In Q1'16 XPO stopped giving a clear picture to investors about the sources of potentially diluted securities – including 10.2m shares from the preferred stock	Sell-side analysts have incorrectly modelled the share count, making XPO's valuation look cheaper than economic reality	
Unjust Insider Enrichment on Questionable Metrics	<ul> <li>XPO uses a non-standard definition of "adjusted cash flow per share" to earn significant bonus compensation</li> <li>The calculation ignores any measure of return on invested capital, which is common in the transportation/logistics industry</li> </ul>	XPO management enriching itself for non-economic value- added investing inc. special bonuses for completing deals (part of its job!). Employees and Unions (Teamsters) already calling out XPO management's greed	



## Case: 2:17-cv-00719-SDM-KAJ Doc #; 251-2 Filed: 12/23/21 Page: 228 of 315 PAGEID #: 4703. Approximately 47% Overstatement

In our opinion, XPO's highly "adjusted" EPS is a combination of aggressive accounting, unsustainable pension gains, and poor practices that underpay workers and appear to cut corners on worker safety.

Line Item	XPO Consensus 2018E	Spruce Point 2018E Normalized	Comment
Operating Income (EBIT)	\$800.0	\$800.0	Consensus estimate
Less: Pension Income		(\$76.8)	Not a sustainable component of continuing earnings. XPO has clearly tried to accelerate gains from the past few years, and claimed these gains as "operating" to inflate EBITDA. Changes in market returns assumptions will drive these gains lower over time
Less: Incremental wage pressures		(\$37.5)	There is ample evidence from <u>union</u> , <u>Senate inquiries</u> and lawsuits that XPO is under spending on wages and safety while US wage pressures increase. We conservatively estimate \$625m of wages and salaries at a 6% increase to direct operating expenses
Less: Transaction, Integration, Restructuring & Rebranding costs		(\$26.7)	Recurring costs of XPO's stated acquisition strategy that it conveniently tries to have investors ignore
Less: Bad Debt Expense		(\$25.0)	It strongly appears that XPO has been delaying bad debt expenses, and just started mentioning it in Q3'18. In 2017, \$24m was charged to expense, but the real amount is likely 2x based on Norbert's historical accrual
Less: Amortization Expense		(\$23.2)	XPO has consistently extended amortization periods to lower amortization expense
Less: Incremental Interest Expense		(\$1.2)	Incremental interest expense from rising interest rates applied to Term Loan
Total Spruce Point Adjustments		(\$190.4)	Our adjustments deducted from the Street's \$635.8m pre-tax income
Pro Forma Pre-Tax Cont. Income	\$635.8	\$445.4	We estimate XPO's normalized pre-tax profit is approximately -30% lower
Less: Taxes	(\$192.4)	(\$134.8)	30% implied effective tax rate
Adjusted Net Income	\$443.4	\$258.6	We deduct \$52m for minority interest
Diluted Shares	133.0	146.8	Analysts ignore the Series A Convertible Pfd. stock while XPO obscures the impact
Adj. Diluted EPS	\$3.33	\$1.76	We estimate continuing EPS approx47% below the street "adjusted" estimates

Source: XPO and Spruce Point estimates; Bloomberg consensus estimates



## Evidence of a Financial Scheme That Could Quickly Collapse

## Case: 2:17-cv-0 SPRUCE POINT CAPITAL MANAGEMENT

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 230 of 315 PAGEID #: 4705 CE POINT MANAGEMENT With Classic Signs of Strain

It's no surprise to Spruce Point that XPO recently walked back its free cash flow guidance for 2019E to \$650m (vs. Consensus est. of \$884m and implying virtually no YoY growth). However, it claims Adj EBITDA can grow 12-15%, which suggests that Adj. EBITDA is not a meaningful way to value XPO's business. (1,2)



- 1) XPO 8-K with updated guidance
- 2) We show both the traditional Free Cash Flow definition = CFO capex and XPO's aggressively defined Free Cash Flow (including asset sale)



## Evidence of A Non-Economic Model

Seventeen acquisitions since Jacobs took control of XPO, \$6.1 billion of capital deployed, and it has generated \$73m of cumulative adjusted free cash flow = a failed business strategy yielding a 1.2% return on capital investment.



XPO's latest Annual Report added a new risk factor: "Our past acquisitions, as well as any acquisitions that we may complete in the future, may be unsuccessful or result in other risks or developments that adversely affect our financial condition and results."

#### **XPO Post Jacobs Roll-Up Strategy Implementation**

\$ in mm	2011	2012	2013	2014	2015	2016	2017	YTD 9m 2018
Cash from Operations		(\$24.2)	(\$66.3)	(\$21.3)	\$90.8	\$625.4	\$798.6	\$536.2
Less: Capital Expenditures		\$7.0	\$11.6	\$44.6	\$249.0	\$483.4	\$503.8	\$413.1
Free Cash Flow	Jacobs	(\$31.2)	(\$77.9)	(\$65.9)	(\$158.2)	\$142.0	\$294.8	\$123.1
Less: Noncontrolling Interest (1)	<u>completes</u> investment				(\$0.5)	\$15.5	\$20.0	\$22.8
Less: Tax Withhold: RSU/PRSU (2)	and forms XPO on					\$11.1	\$16.6	\$48.8
Less: Preferred Stock Dividend (3)	Sept 2011	\$3.0	\$3.0	\$2.9	\$2.8	\$2.9	\$2.9	\$2.1
Spruce Pt. Adj. Free Cash Flow		(\$34.2)	(\$80.9)	(\$68.8)	(\$160.5)	\$112.5	\$255.3	\$49.4
Cumulative Adj. FCF		(\$34.2)	(\$115.1)	(\$183.9)	(\$344.4)	(\$231.9)	\$23.4	\$72.8
Acquisition Cost (Inc. Minority Interest) Earn-Out Payments Rebranding Costs (4) Integration and Deal Costs (4) Total Acquisition Costs	\$0.0 \$0.5 \$0.0 \$1.0 \$1.5	\$57.2 \$0.5 \$0.0 <u>\$2.9</u> <b>\$60.6</b>	\$458.8 \$0.0 \$0.0 \$6.5 <b>\$465.3</b>	\$814.0 \$0.0 \$1.2 \$23.6 \$838.8	\$4,346.7 \$0.0 \$12.4 \$188.6 \$4,547.7	\$1.4 \$0.0 \$30.1 <u>\$73.1</u> <b>\$104.6</b>	\$0.0 \$0.0 \$18.4 \$59.9 \$78.3	\$0.0 \$0.5 \$2.9 <u>\$17.8</u> <b>\$20.7</b>
Cumulative Acquisition Costs	\$1.5	\$62.0	\$527.3	\$1,366.1	\$5,913.8	\$6,018.4	\$6,096.7	\$6,117.4

<sup>1)</sup> Represents the provision on the income statement that is a claim due to minority owners of XPO Logistics Europe SA. XPO's cash flow statement begins with Net Income pre-minority interest.

<sup>2)</sup> Cost associated with XPO's discretionary policy to compensate employees with restricted stock, presented as a "financing" cash flow, but operating in nature

<sup>3) &</sup>lt;u>Fixed and recurring payments</u> to Series A Preferred Stockholders akin to interest expense

<sup>)</sup> Recurring costs necessary to implement XPO's stated acquisition business strategy



## Echo Logistics Roll-Up

We've been critical of Echo Global Logistics in the past, but its roll-up strategy including 21 companies is significantly better than XPO's. Since inception, Echo has spent \$521m for acquisitions, with cumulative free cash flow of \$166m = 32% return on investment. By year eight (on an apples-to-apples basis with XPO), Echo returned 37%.

								Where XPO Is today					
\$mm	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	YTD 2018
Operating Cash Flow	\$2.1	\$0.4	\$1.7	(\$5.6)	\$8.6	\$15.7	\$22.8	\$24.8	\$32.4	\$70.8	\$59.7	\$48.7	\$63.0
Less: Capital Expenditures	\$1.5	\$4.0	\$4.7	\$4.3	\$6.2	\$6.4	\$8.9	\$9.2	\$15.2	\$14.7	\$46.9	\$20.7	\$19.5
Free Cash Flow	\$0.6	(\$3.6)	(\$3.0)	(\$9.9)	\$2.4	\$9.4	\$13.9	\$15.6	\$17.2	\$56.1	\$12.9	\$28.0	\$43.5
Less: Tax Withheld / Stock	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.2	\$0.8	\$1.1	\$1.9	\$4.9	\$1.8	\$2.4
Less: Preferred Dividends	\$0.2	\$0.0	\$0.0	\$3.5	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Spruce Point Adj. FCF	\$0.3	(\$3.6)	(\$3.0)	(\$13.4)	\$2.4	\$9.4	\$13.7	\$14.7	\$16.1	\$54.2	\$8.0	\$26.2	\$41.1
Cumulative Adj. FCF	\$0.3	(\$3.2)	(\$6.2)	(\$19.6)	(\$17.2)	(\$7.8)	\$5.9	\$20.6	\$36.7	\$90.9	\$98.9	\$125.1	\$166.2
Acquisition Costs (1)	\$0.0	\$4.8	\$0.4	\$7.2	\$8.6	\$5.0	\$16.4	\$2.0	\$33.8	\$392.7	\$11.4	\$0.0	\$1.0
Plus: Deferred and Contingent Payments	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$1.6	\$5.2	\$3.6	\$4.9	\$20.4	\$1.5	\$0.2	\$0.6
Total Acquisition Costs	\$0.0	\$4.8	\$0.4	\$7.2	\$8.6	\$6.6	\$21.6	\$5.6	\$38.6	\$413.1	\$12.9	\$0.2	\$1.6
Cumulative Acq. Costs	\$0.0	\$4.8	\$5.2	\$12.5	\$21.1	\$27.6	\$49.2	\$54.8	\$93.4	\$506.5	\$519.5	\$519.7	\$521.2

<sup>1)</sup> Includes Command Transportation integration costs of \$2.3 and \$11.4m in 2015 and 2016

Source: ECHO SEC Filings

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## XPO Collapses Absent Capital Support

Classic corporate financial schemes that collapsed were exposed for their dependency on external financing and an inability to generate sustained cash flow. Not surprisingly, we find that XPO is a capital raising machine, having raised \$5 billion of debt and equity capital, while paying out \$190m of financing costs to Wall Street (ex: M&A advisory fees). XPO has bridged the gap between \$6.1bn of acquisition costs and \$5bn of capital raising with \$817m of asset sales, and \$364m of factoring receivables through XPO Logistics Europe created in Oct 2017.

"A lot of frauds are in effect Ponzi schemes. And so when they can't raise more and more capital, they collapse"
-- Jim Chanos, II Magazine, Sept 2018

#### **XPO Entirely Dependent On External Financing**

\$mm	2012	2013	2014	2015	2016	2017	YTD 9m 2018	Cumulative
LT Debt Issuance	\$138.5		\$500.0	\$4,151.8	\$1,377.8	\$819.2	\$895.8	\$7,883.1
LT Debt Repayment					(\$1,889.2)	(\$1,386.6)	(\$1,225.4)	(\$4,501.2)
Revolver Borrowing		\$73.3	\$130.0					\$203.3
Revolver Repayment			(\$205.0)					(\$205.0)
ABL Issuance					\$360.0	\$995.0	\$925.0	\$2,280.0
ABL Repayment					(\$330.0)	(\$925.0)	(\$1,025.0)	(\$2,280.0)
Other LT Debt and Capital Leases				(\$1,215.6)	(\$151.4)	(\$106.4)	(\$84.7)	(\$1,558.1)
Debt Issuance Costs			(\$10.4)	(\$42.9)	(\$25.8)	(\$16.8)	(\$6.4)	(\$102.3)
Total Debt Flows	\$138.5	\$73.3	\$414.6	\$2,893.3	(\$658.6)	(\$620.6)	(\$520.7)	\$1,719.8
Common/Preferred Stock Issuance	\$144.9	\$253.6	\$1,131.3	\$1,260.0		\$287.6	\$348.5	\$3,425.9
Equity Issuance Costs	(\$8.0)	(\$14.1)	(\$33.9)	(\$31.9)				(\$87.9)
Total Equity Flows	\$136.9	\$239.5	\$1,097.4	\$1,228.1		\$287.6	\$348.5	\$3,338.0

Source: SEC Filings 16



## Bank Overdrafts Are A Warning Sign

XPO has never explained the reason in its filings for bank overdrafts. Furthermore, it stopped providing overdraft details in its current liabilities at the end of 2016 when its Chief Accounting Officer and Chief Legal Officer resigned. (1)

Spruce Point Is
Not Aware of
Why Any
Healthy and
"Successful"
Company
Needs
To Regularly Tap
Bank Overdrafts

	Years Ended December 31,						
	2017	2016	2015				
Financing activities							
Repurchase of debt	(1,386.6)	(1,889.2)	_				
Proceeds from issuance of long-term debt	819,2	1.377.8	4,151.8				
Repayment of long-term debt and capital leases	(106.4)	(151.4)	(1,215.6)				
Proceeds from borrowings on ABL facility	995.0	360.0					
Repayment of borrowings on ABL facility	(925.0)	(330.0)					
Payment of debt issuance costs	(16.8)	(25.8)	(42.9)				
Payment for tax withholdings for restricted shares	(16.6)	(11.1)					
Dividends paid	(6.6)	(5.4)	(2.8)				
Change in bank overdrafts	(2.8)	(16.5)	(12.3)				
Proceeds from common stock and preferred stock offerings	287.6	_	1,260.0				
Purchase of noncontrolling interests	(-)	(1.4)	(459.7)				
Payment for equity issuance costs		-	(31.9)				
Other	(7.4)	12.2	(1.7)				
Net cash (used in) provided by financing activities	(366.4)	(680.8)	3,644.9				

Source: XPO's 2017 10-K

XPO Stopped
Providing
Additional
Balance Sheet
Disclosure After
FY 2016 When
Key Executives
Resigned

Other Current Liabilities					
Other current liabilities is comprised of the following:		Dece	mber 31,		
(In millions)		2016		2015	
Deferred revenue	S	47.3	S	62.4	
Employee benefits		37.3		38.7	
Book and bank overdrafts		11.0		29,5	
Acquisition earn-out liability		_		21,8	
Income tax payable		27.4			
Other current liabilities		33.7		51.2	
Total Other Current Liabilities	S	156.7	S	203.6	

on the mysterious earn-out liability <u>here</u>

Additional analysis

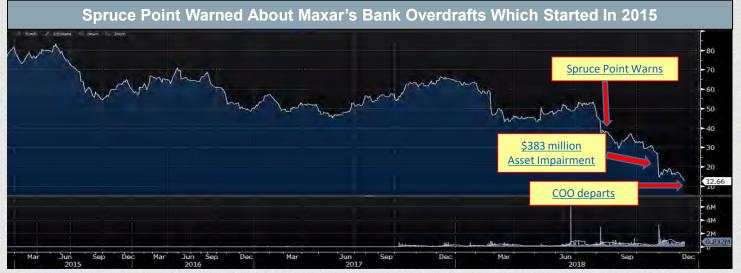
Source: XPO's 2016 10-K

SPRUCE POINT

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 235 of 315 PAGEID #: 4710 COMPANIES WE KNOW Reported "Bank Overdrafts" Have Imploded



Source: MDC Partners 2016 10-K



Source: Maxar 2017 Annual Report



## Case: 2:17-cv-00719-SDM-KA1 Doc #; 251-2 Filed: 12/23/21 Page: 236 of 315 PAGEID #: 4711 Higher Capital Intensity Businesses

Investors appear blind to the fact that as XPO has moved away from its traditional third party asset-light logistics business, and into trucking and supply chain fulfillment, its capital requirements have increased. We don't view any of these as positive developments, especially as XPO is now fronting capital for customer warehouses.

Acquisitions Have Moved XPO Into More Capital and Asset Intensive Businesses





#### While A Customer Is Requiring XPO To Front Capital For Its Warehouse

**XPOLogistics** 

Salutione About Us Novs Work For Us Brive For Us Invest-

#### HOME / NEWSROOM PRESS RELEASE



#### Nestlé and XPO Logistics Build a Digital Warehouse of the Future in the UK

Greenwich, Conn. | June 18, 2018

Nestlé, the world's largest food and drink company, and XPO Logistics, a leading global provicer of transport and logistics solutions, are co-creating a 638,000-square-foot distribution center at the new SEGRC East Miclands Gateway Logistics Park in Leicestershire, UK. The facility, a digital warehouse of the future will be occupied precominantly by Nestlé for its consumer packaged goods and will function as a testbed environment for XFO technology prototypes prior to global release.

The custom-designed distribution center, scheduled for completion in 2020, will feature advanced sorting systems and robotics alongside state-of-the-art automation co-developed with Swisslog Logistics Automation. The site's digital ecosystem will integrate predictive data and intelligent machines to deliver one of the most advanced distribution management centers in the world, giving consumers faster, more efficient access to KITKAT, MAGGI, NESCAFÉ and other much-loved Nestlé



The XPO-owned facility will be strategically ocated in the Midlands to benefit from direct access to the M1 motorway for road transport, the East Midlands Airport for cargo flights, and an onsite rail freight terminal with direct access to the major UK ports of Southampton, Felixstowe, London Gateway and the Channel Tunnel.

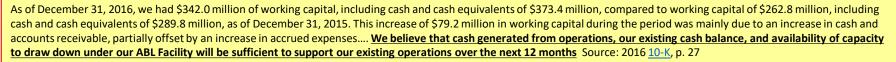
Source: XPO press release



## Signs Suggesting A Recent Liquidity Crunch

Our analysis illustrates that XPO experienced a recent cash crunch. The spread between DSOs and DPOs contracted in Q4'17 and it implemented a trade receivable facility in the same quarter. The ratio of Working Capital to LTM Revenues also gapped higher into 2018, which suggests its business is become more capital intensive. XPO also stopped providing its working capital discussion in the 2017 10-K, and omitted the disclosure that it had sufficient ability operate in the next 12 months. In Q3 2017 (November) the CFO said working capital would be a source of \$50-\$60m of cash in Q4 2017; this proved to be false (1).

#### This Disclosure Was Dropped In the 2017 10-K



\$mm		2	016			20	17			2018	
ŞIIIII	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Days Sales Outstanding (DSO)	48.4	55.7	51.1	57.3	57.5	59.0	60.7	59.8	59.2	58.6	58.9
Days Payables Outstanding (DPO)	25.3	33.3	28.1	31.1	32.1	37.0	41.7	51.8	47.5	47.6	48.6
Difference DSO – DPO	23.2	22.4	23.0	26.2	25.4	22.0	19.0	8.0	11.6	11.0	10.3
Euro Trade A/R Capacity							€ 270	€ 270	€ 350	€ 350	€ 350
Outstanding % Utilization								€ 253 94%	€ 322 92%	€ 312 89%	€ 314 90%
Trailing 12 Month Revenues (A)	\$10,466	\$12,934	\$14,285	\$14,619	\$14,613	\$14,690	\$14,864	\$15,381	\$16,033	\$16,636	\$17,084
Current Assets  Less: Cash and Equivalents  Adjusted Current Assets (B)	\$3,041 (\$279) \$2,667	\$3,106 (\$378) \$2,728	\$3,172 (\$360) \$2,811	\$3,074 (\$373) \$2,700	\$3,096 (\$342) \$2,967	\$3,258 (\$291) \$2,967	\$3,582 (\$473) \$3,109	\$3,588 (\$397) \$3,191	\$3,806 (\$380) \$3,426	\$3,713 (\$361) \$3,352	\$3,830 (\$428) \$3,402
Current Liabilities (C)	\$2,713	\$2,640	\$2,694	\$2,732	\$2,597	\$2,734	\$2,908	\$2,997.1	\$3,012	\$2,940	\$2,995
Working Capital (B – C) / (A) % of LTM Sales	0.5%	0.7%	0.8%	-0.2%	1.1%	1.6%	1.4%	1.3%	2.6%	2.5%	2.4%

Source: XPO, Bloomberg and Spruce Point analysis

<sup>1)</sup> CFO working capital forecast for Q4 2017 of \$50-\$60m on Q3 2017 earnings call



## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 238 of 315 PAGEID #: 4713 To The Banks' Interests Ahead of Shareholders

The proxy statement also illuminates the fact that prior equity awards were certified by a condition that "[XPO's] Stock Price at \$60 or above for 20 consecutive days prior to April 2, 2018" The \$60 price objective is oddly similar to the forward equity sales price of \$58.50 between XPO and JPM / Morgan Stanley in July 2017. Given our earlier conclusions that XPO is heavily dependent on external financing, this creates the appearance of preferential dealing between XPO and its bankers.

"In July 2017, the Company completed a registered underwritten offering of 11 million shares of its common stock at a public offering price of \$60.50 per share, plus up to an additional 1.65 million shares of its common stock pursuant to an option granted to the underwriters to purchase additional shares of the Company's common stock directly from the Company (the "Offering"). Of the 11 million shares of common stock, 5 million shares were offered directly by the Company and 6 million shares were offered in connection with forward sale agreements (the "Forward Sale Agreements")"

XPO 8-K: "On July 25, 2018, the Company settled each of the Forward Sale Agreements with the applicable Forward Counterparty, as a result of which the Company issued 6,000,000 shares of its common stock in the aggregate and received aggregate net cash proceeds equal to approximately \$351 million. Consistent with the Company's strategy to grow its business in part through acquisitions, the Company entered into the Forward Sale"

No acquisition ever occurred, and XPO sold stock at a significant discount to the market

From
The Bank's
Perspective At
Settlement
- Ootti Oili C

Forward Purchase	Shares Subject to	Market Price	Beneficial Gain
Price	Forward Sale	of XPO shares on Settlement	to Banks
(A)	(B)	(C)	(B)*(C-A)
\$58.50	6 million	\$101.3	

**From** The XPO's Shareholder Perspective At Settlement

Forward Sales Price	Shares Subject to Forward Sale	Proceeds To XPO	Shares Issued Had XPO Done An Equivalent \$351m raise on 7/25/18 (1)	Incremental Share Dilution To XPO Investors
\$58.50	6 million	\$351m	3.5 million	+2.5 million



House of Cards Accounting

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 240.01315 PAGEID #: 4715 To Management

Source: XPO 2018 Investor Presentation

#### 2017 was the sixth straight year that XPO met or exceeded its full year financial targets

XPO touts its ability to meet and exceed expectations in a consistent manner. Management is most likely to manipulate and inflate the metrics important for its compensation and its targets to appease investors and analysts. In the quote below, CEO Jacobs lays out exactly the three most important metrics. Note: EBITDA minus capex and interest expense is his bonus metric.

- Q Bascome Majors: "Just one final question on incentives. You've been very transparent on your long-term incentive plan and the FCF per share targets that you rolled out last year for that. I was wondering if you can talk about in the short-term plan or annual bonus, is there any different focus this year than last year? Just what metrics are being emphasized and why as we head into 2017 and 2018?"
- A CEO Bradley S. Jacobs: "It's real simple. It's EBITDA minus CapEx, minus interest expense. So, we're aligning the executive suite with shareholder interest. So, when we meet with our top shareholders, we usually – and they give us a QBR, quarterly business review, just like our customers give us a QBR, the main three metrics that they look at are, first how's your EBITDA growth going? Second, box checks very well there, very significant above average EBITDA growth. Second one they look at is, cash flow, and nice big ramp-up of cash flow this year from the previous year, nice expected FCF increase 2017 over 2016 and even continuing that in 2018 over 2017. And the third metric they look at is, organic revenue growth. They're looking for mid-single-digits organic revenue growth. So those are the three things that our owners, our shareholders are looking at, so that's what we want to incentivize our organization focused on as well."

Source: Q4 2016 Earnings Call



### #1: Dubious EBITDA

Spruce Point has consistently warned about Non-GAAP financial presentation abuse. XPO's Adjusted EBITDA is particularly egregious, especially in light of its desire to give 100% credit for XPO Europe despite owning just 86.25%.

Reconciliation of Non-GAAP Measures XPO Logistics, Inc.

Consolidated Reconciliation of Net Income (Loss) to Adjusted EBITDA ex. Truckload

(Unaudited)

(In millions)

Key word: **UNAUDITED** 

	Twelve Months Ended December 31,							
	_	2017	_	2016	_	2015		2014
Net income (loss) attributable to common shareholders Preferred stock beneficial conversion charge		312.4	\$	63.1	\$	(245.9) (52.0)	\$	(107.4) (40.9)
Distributed and undistributed net income		(27.8)		(5.9)		(2.8)		(2.9)
Noncontrolling interests		(20.0)		(15.5)		0.5		
Net income (loss)		360.2		84.5		(191.6)		(63.6)
Debt commitment fees				•		19.7		14.4
Loss on conversion of convertible senior notes		0.5		0.2		10.0		5.5
Loss on debt extinguishment		36.0		69.7				
Other interest expense		283.8		360.9		187.0		28.1
ncome tax (benefit) provision		(99.5)		22.3		(90.9)		(26.1)
Accelerated amortization of trade names						2.4		3.3
Depreciation & amortization expense		658.4		643.4		362.5		95.0
Unrealized loss (gain) on foreign currency option and								
forward contracts		49.4		(36.0)		2.5		
EBITDA	\$	1,288.8	S	1,145.0	\$	301.6	\$	56.6
Transaction & integration costs		59.9		73.1		188.6		23.6
Rebranding costs		18.4		30.1		12.4		1.2
Gain on sale of intermodal equipment					4.	(9.5)	1	*
Adjusted EBITDA	\$	1,367.1	\$	1,248.2	\$	493.1	\$	81.4
Adjusted EBITDA divested NA Truckload business				80.1		18.8		
Adjusted EBITDA ex. Truckload	s	1,367.1	s	1,168.1	s	474.3	S	81.4

XPO giving itself 100% credit for something, despite only owning 86.25% and adds these items to EBITDA when they should be deducted (1)

Recurring costs necessary to implement its stated roll-up business strategy cannot simply be ignored

Refer to the "Non-GAAP Financial Measures" section on page 2 of this document Adjusted EBITDA was prepared assuming 100% ownership of XPO Logistics Europe



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 242 of 315 PAGEID #: 4717 Phantom Income Inrough An Unexplained Reserve For An Earn-Out?

XPO booked a mysterious "Acquisition Earn-Out Liability" of \$29m in Q2'15. XPO completed three deals in this time period, but made no disclosure about any earn-out components of the consideration. In subsequent periods, XPO did not recognize any payments through its cash flow statement to satisfy the earn-out, or equity issuance to satisfy the debt. Proper accounting for the earn-out would have resulted in XPO marking-to-market the changes in the value of the earn-out through the income statement.

Failure to achieve the earn-out and reducing its value to zero would have resulted in \$29m of phantom income. (1)

Date	Company Acquired	Consideration Paid According To XPO SEC Filings Does Not Indicate Earn-Out Incentive Compensation
Feb 9, 2015	UX Specialized Logistics	<ul> <li>The fair value of the total consideration paid under the UX Asset Purchase Agreement was \$58.9 million and consisted of \$58.1 million of cash paid at the time of closing, including an estimate of the working capital adjustment, and \$0.8 million of equity</li> </ul>
May 4, 2015	Bridge Terminal Transport, Inc	<ul> <li>The fair value of the total consideration paid under the BTT Stock Purchase Agreement was \$103.8 million and consisted of \$103.1 million of cash paid at the time of closing, including an estimate of the working capital adjustment, and \$0.7 million of equity</li> </ul>
June 9, 2015	Norbert Dentressangle	• Total cash consideration paid for the majority interest in the share capital of ND and settlement of the warrants was €1,437.0 million, or \$1,603.9 million, excluding acquired debt.

Warning: "From 1997 to 2000, during a period of enormous growth through acquisitions, URI engaged in improper accounting practices involving its valuation of acquired assets, use of acquisition reserves, and accounting for customer relationships."

Source: SEC vs United

**Rentals Complaint 2008** 

Deferred revenue 48.8 0.5 Acquisition earnout liability 29.0 Current portion of interest rate swap liability 4.6 Other current liabilities 21.6 6.2 104.0 6.7 Total Other Current Liabilities Other Current Liabilities Other current liabilities is comprised of the following: December 31, (In millions) 2016 2015 47.3 62.4 Deferred revenue Employee benefits 37.3 38.7 Book and bank overdrafts 11.0 29.5 Acquisition earn-out liability 21.8 Income tax payable 27.4 33.7 51.2 Other current liabilities

As of June 30, 2015

156.7

As of December 31, 2014

203.6

Total Other Current Liabilities

<sup>1)</sup> See PwC accounting for contingent considerations as a primer on earn-out accounting

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## Low Quality Pension Income

Ever since acquiring Con-Way and ND, XPO has been reporting accelerated pension gains that have been increasing EBITDA, and now pre-tax income (1). These gains are non-operational and can be used to mask underlying weakness in XPO's core business. Not surprisingly, XPO hasn't drawn attention to pension gains in its earnings press releases, quarterly filings, conference calls or investor presentations until recently in Q2'18 (2).

"We have historically realized income, rather than expense, from these plans. We generated aggregate income from our U.S. and U.K. plans of \$44.4 million in 2017, \$27.5 million in 2016 and \$8.2 million in 2015. The plans have been generating income due to their funded status and since they do not allow for new plan participants or additional benefit accruals. The effects of the defined benefit pension plans on our operating results consist primarily of the net effect of the interest cost on plan obligations for the U.S. Plans and the U.K. Plan, and the expected return on plan assets. We estimate that the defined benefit pension plans will contribute annual pre-tax income in 2018 of \$32.4 million for the U.S. Plans and \$41.4 million for the U.K. Plan." XPO 10-K pp. 38 and 40

Year End	US Plan	UK Plan	Total Pre-Tax Income Gain	Location in Income Statement	XPO Adj. EBITDA	Gain as % of EBITDA	XPO GAAP Pre-Tax Profit	Pension Gain % of Pre-Tax Profit	Estimated Impact on EPS (3)
<u>2018E</u>	\$32.4 est	\$41.4 est	\$76.8 est	Other Income	\$1,600	4.8%	\$643.0	12.0%	\$0.43
2017	\$15.4 est	\$26.0 est	\$44.4 (actual)	Operating Income	\$1,367	3.2%	\$260.7	17.0%	
<u>2016</u>	\$9.3 est	\$14.1 est	\$27.5 (actual)	Operating Income	\$1,248	2.2%	\$106.8	25.7%	
2015	N/A	N/A	\$8.2 (actual)	Operating Income	\$493	1.7%	(\$282.5)	NM	

Source: XPO 10-K filings, Bloomberg 2018 consensus estimates. Note: US/UK estimated gains from previous year Annual Reports. XPO's total pre-tax gains exceeded estimates in both 2016/17

- 1. XPO adopted ASU 2017-07 on Jan 1, 2018 and reclassified the income from operating income to other expense (income) on the income statement
- 2. Q2'18 conference call: "Other income was \$30 million in the quarter versus \$20 million in the first quarter. The largest piece of this was due to our well-funded pension plans, where strong asset returns have outpaced expense."
- 3. Estimate based on 2018E income tax rate of 23.6% and 134.1 diluted shares. Previous years the effective tax rate was negative

## SPRUCE POINT

## Case: 2:17-cv-00719-SDM-KAJ Doc#: 251-2 Filed: 12/23/21 Page: 244 of 315 PAGEID#: 4719 SIGNS TO SUGGEST WAS A BOODEDT Allowance Manipulation

We analyzed XPO's allowance for doubtful accounts and find a worrisome fact that allowance reserves were depressed post the Q2 2015 acquisitions of ND, UX and BTT. ND was the material acquisition contributor, and its financials show a 2.4% allowance accrual vs. XPO's 1.9% pre-acquisition. On a go forward basis, it makes little sense why XPO's allowance dropped to 0.6% and has risen every single quarter in the last two and half years to a more normal level. Ironically, at Jacob's last company United Rentals, the SEC charged it with manipulating the accounts receivable acquisition reserves. Absent intentional manipulation, the rising allowance trend could indicate XPO's declining ability to collect from existing customers, or sales being recorded from lower quality new customers.

"Instead of eliminating the accounts receivable acquisition reserves after the allocation period (presumed to last no longer than one year), URI left the acquisition reserves on its books and commingled acquisition related accounts receivable reserves with operating accounts receivable reserves, enabling the company to offset improperly post-acquisition bad debt expense" SEC URI Complaint 2008

ć	2015			2016			2017			2018					
\$mm	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Accounts Receivable, Net (A)	\$504.7	\$1,673.2	\$1,647.2	\$2,266.4	\$2,265.1	\$2,266.4	\$2,338.4	\$2,313.0	\$2,338.0	\$2,481.9	\$2,601.0	\$2,725.3	\$2,858.4	\$2,855.9	\$2,914.9
Allowance For Doubtful Accounts (B)	\$10.0	\$10.1	\$8.9	\$16.9	\$20.3	\$21.3	\$26.2	\$26.3	\$24.3	\$36.2	\$39.2	\$42.4	\$44.8	\$45.9	\$51.9
Gross Receivables (A+B)=(C)	\$514.7	\$1,683.3	\$1,656.1	\$2,283.3	\$2,285.4	\$2,287.7	\$2,364.6	\$2,339.3	\$2,362.3	\$2,518.1	\$2,640.2	\$2,767.7	\$2,903.2	\$2,901.8	\$2,966.8
Allowance as % of Gross = (B / C)	1.9%	0.6%	0.5%	0.7%	0.9%	0.9%	1.1%	1.1%	1.0%	1.4%	1.5%	1.5%	1.5%	1.6%	1.7%

Source: XPO Financial Statements

**Deals Close** 

% Rises Every Single Quarter Since Closing Norbert Deal

Norbert's **Accounts** Pre-XPO Acquisition

€000	31 Dec. 2014	31 Dec. 2013	31 Dec. 2012
frade receivables	908.010	795,593	637,198
Impairment provisions	(21,563)	(19.714)	(14,824)
Trade receivables	886,447	775,879	622,374
Tax and social security receivables	87,046	63,606	64,994
Advances and down payments	8,183	11.134	1,470
Pre-paid expenses	50,615	48,583	43,575
Other miscellaneous receivables	18.930	18.420	19,102
Other receivables	164,774	141,743	129,141
Current tax receivables	38,558	17,621	12,079



Norbert's impairment provisions as a % of gross trade receivables were 2.4%

Source: XPO 8-K

Lo and behold, XPO just now included a disclosure in its 3<sup>rd</sup> quarter 2018 10-Q about how it accounts for accounts receivables and allowance for bad debt, and added bad debt expense in its MD&A. This strongly suggests it has been covering up strain in its business, consistent with our analysis and observations on the prior slide.

#### **New Disclosure: Accounts Receivable**

Accounts receivable are recorded at the contractual amount. The Company records its allowance for doubtful accounts based upon its assessment of various factors. The Company considers historical collection experience, the age of the accounts receivable balances, credit quality of the Company's customers, any specific customer collection issues that have been identified, current economic conditions, and other factors that may affect the customers' ability to pay. The Company writes off accounts receivable balances once the receivables are no longer deemed collectible from the customer. The Company sells certain accounts receivable to unrelated financial institutions. The cost of participating in these programs was immaterial to the Company's results of operations for the nine months ended September 30, 2018 and 2017.

#### Q3 2018: Management Discussion and Analysis (MD&A)

SG&A for the third quarter of 2018 was \$447.2 million, or 10.3% of revenue, compared to \$399.6 million, or 10.3% of revenue, in the third quarter of 2017. SG&A as a percentage of revenue was flat in the third quarter primarily due to higher bad debt expense, lower professional fees and essentially flat employee compensation costs. SG&A for the first nine months of 2018 was \$1,351.7 million, or 10.5% of revenue, compared to \$1,213.4 million, or 10.8% of revenue, in the first nine months of 2017. The decrease in SG&A as a percentage of revenue in the nine-month period primarily reflects lower professional services and consulting costs and revenue growth of 15.2% for the first nine months of 2018..

Source: <u>10-Q</u>, pp. 5 and 25



### More Desperate Ways To Inflate EBITDA?

XPO made a subtle change in Q3 2018 to move gains and losses from property and equipment from "other expenses (income)" into the direct operating expense line item. XPO does not break-out these gains or losses, but in a worst case, it is improperly inflating EBITDA by running gains as a reduction to operating expenses. XPO's asset sales have increased 54% YoY, and it explicitly says any gains/loss below operating income are excluded form EBITDA. (1)

New Disclosure "Direct operating expenses are both fixed and variable expenses and consist of operating costs related to our contract logistics facilities, last mile warehousing facilities, LTL service centers and European LTL network. Direct operating costs consist mainly of personnel costs, facility and equipment expenses such as rent, equipment maintenance and repair expenses, costs of materials and supplies, information technology expenses, depreciation expense, utilities and other facility related costs and gains and losses on sales of property and equipment.

Source: Q3'18 10-Q, p. 25

Old Disclosure "Other expense (income) for the second quarter of 2018 was \$(30.2) million as compared to \$(12.5) million in the second quarter of 2017. Other expense (income) for the first six months of 2018 was \$(49.8) million as compared to \$(19.0) million in the first six months of 2017. Other expense (income) includes net periodic benefit income **and gains and losses on sales of property and equipment."** 

Source: Q2'18 10-Q, p. 25

#### **Increasing Proceeds From Asset Sales**

Year	Q1′17	Q2'17	Q3′17	9M 2017	Q1′18	Q2′18	Q3′18	9M 2018
Asset Sales	\$20.5	\$21.7	\$17.4	\$59.6	\$10.4	\$51.5	\$30.2	\$91.7
YoY Growth					-49%	+135%	+74%	+54%

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 247 of 315 PAGEID #: 4722 SPRUCE POINT CAPITAL MANAGEMENT Financial Presentation

XPO uses aggressive financial presentation methods to bolster its cash flow and leverage by including proceeds from assets sales. This is another aggressive financial presentation tactic used at Jacob's United Rentals. (1) Even worse, XPO assumed that its forward stock sale transaction would settle, while blindly ignoring counterparty risk.

Consolidated Cash Flows Provided by Operating Activities to Free Ca	sh Flow
(in millions)	

Twelve Months Er	nded December 31,
2017	2016
\$ 798.6	\$ 625.4
(503.8)	(483.4)
79.1	68.9
\$ 373.9	\$ 210.9
	\$ 798.6 (503.8) 79.1

Non-standard and aggressive definition.
Assets sales are not guaranteed or recurring

Consolidated	Net Debt to	Adjusted	<b>EBITDA</b>	Ratio
(in millions)				

	December 31, 2017
Total debt	\$4,521.2
Less: Cash and cash equivalents	(396.9)
Less: Potential proceeds from forward sale agreements	(350.0)
Net Debt	\$3,774.3
Adjusted EBITDA	\$1,367.1
Net Debt to Adjusted EBITDA ratio	2.76

Any counterparty credit risk on those forward contracts?

Source: XPO Proxy Statement, Annex A, filed April 18, 2018

1) URI <u>10-K</u>, p. 29

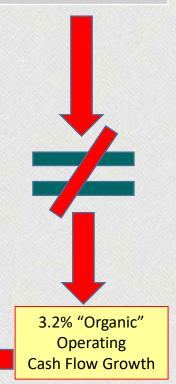
## SPRUCE POINT

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 248 of 315 PAGEID #: 4723 #3: Organic Revenue Growth Does Not Equal Organic Cash Flow

XPO has abandoned its attempt at expanding organic revenue disclosure post Q1'18. Through YTD Q3'18, organic quarterly revenue growth has averaged 10.8%, yet equates to just 3.2% YTD organic operating cash flow growth.

	Q1 2018	Q2 2018	Q3 2018	YTD Quarterly Average
Reported Organic Revenue Growth	11.00%	10.90%	10.50%	10.80%

	Nine Months Ended September 30,						
(In millions)		2018	2017				
Operating activities							
Net income	\$	353.4	8	153.1			
Adjustments to reconcile net income to net cash from operating activities							
Depreciation and amortization		527.2		489.1			
Stock compensation expense		64.1		50,1			
Accretion of debt		11.1		14.5			
Deferred tax expense (benefit)		14.3		(3.1)			
Debt extinguishment loss		27.1		13,6			
Unrealized (gain) loss on foreign currency option and forward contracts		(12.9)		49,9			
Other		3.2		20.1			
Changes in assets and liabilities:							
Accounts receivable		(262,0)		(199,8)			
Other assets		(98.5)		(45,4)			
Accounts payable		(4.1)		48.6			
Accrued expenses and other liabilities		(86.7)		(71.2)			
Net cash provided by operating activities		536.2		519,5			
Source: 03 2018 10 0							



## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 249 of 315 PAGEID #: 4724 CULT DOWN And FX Impacts

Non-GAAP metrics such as organic growth calculations are not audited and give management significant discretion to show results in the most glowing fashion. Total non-US revenues increased 6.1% between 2016 and 2017. Yet, it reported an FX hedge loss of \$57.6m in 2017 vs. a gain of \$40.3m in 2016. However, XPO reports to investors virtually no impact to organic revenue from currency fluctuations.

"We believe that total organic revenue is an important measure because it excludes the impact of the following items: foreign currency exchange rate fluctuations, acquisitions and divestitures, and fuel surcharges. Specifically, our total organic revenue reflects adjustments to (i) exclude revenue from our North American truckload unit, which was sold in October 2016, (ii) exclude the estimated revenue attributable to fuel, and (iii) apply a constant foreign exchange rate to both periods (based on average rates during the monthly periods)."

Consolidated Revenue to Total Organic Reven (in millions)		Twelve	cembe	r 31,			
		2017			2016		
Revenue	\$15	\$1	\$14,619.4				
North American Truckload				(431.9)			
Fuel		(1	.441.0)	C	(1,197.8)		
Foreign Exchange Rates			<u> </u>				
Total Organic Revenue		\$13	\$1	\$12,989.7			
Organic Revenue Growth		7.2%					
Source: XPO Proxy Statement, Annex A, filed April 18, 2018							
			Years en	ded December 31,	per 31,		
În millions)		2017		2016	2015		
Inrealized foreign currency option and forward contracts losses (gains)	S	49.4	S	(39.7)	S	1.0	
Realized foreign currency option and forward contracts losses (gains)		15.0		(3.8)		-	
Foreign currency transaction and remeasurement (gains) losses		(6.8)		3.2		2.4	
Remeasurement loss on cash held to purchase ND				-		31.7	
oss on forward contract related to ND acquisition			<b>*</b>	-		9,7	
Total foreign currency loss (gain)		57.6	S	(40.3)	S	44.8	

Source: XPO 2017 10-K

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 250 of 315 PAGEID #: 4725 CUESTIONABLE Organic Revenue Growth And FX Impacts (Cont'd)

If management can't seem to get its GAAP treatment of currency hedging correctly, do you really trust its ability to accurately present Non-GAAP foreign currency results on revenues? In Q3'18, XPO reclassified foreign currency cash flow from hedge from operations to investing, which now shows historical overstatement of results.

#### **Foreign Currency Option and Forward Contracts**

"In the third quarter of 2018, the Company changed its policy related to the cash flow presentation of foreign currency option contracts as the Company believes cash receipts and payments related to economic hedges should be classified based on the nature and purpose for which those derivatives were acquired and, given that the company did not elect to apply hedge accounting to these derivatives, we believe it is preferable to reflect these cash flows as Investing activities. Previously, these cash flows were reflected within Operating activities. Net cash used by investing activities for the nine months ended September 30, 2018 includes a reclassification of \$13 million of cash usage that had been reflected within Operating activities for the six months ended June 30, 2018. Prior years' impact were not material. With this change in presentation, all cash flows related to the foreign currency contracts are included in Investing activities on the Condensed Consolidated Statements of Cash Flows."

Source: XPO Q3 10-Q, p. 15





# Obvious Signs of Aggressive Accounting Assumptions Tied To Intangibles

XPO is increasing its amortization period assumptions, which lowers expenses and boosts earnings, while at the same time reducing disclosures when its Chief Accounting Officer resigned. XPO's footnotes reveal forward expectations for amortization expense, and actual results have come in materially lower. We estimate a \$0.12 - \$0.14 annual benefit.



"URI [United Rentals] engaged in improper accounting practices involving its valuation of acquired assets, use of acquisition reserves, and accounting for customer relationships." SEC URI Complaint 2008

#### **XPO Stretching Out Assumptions Every Year**

Year	Customer Relationships	Trade Names	Non-compete Agreements	Carrier Relationships	Other Intangibles
<u>2017</u>	14 years	3 years	7 years	Stopped Disclosing	Stopped Disclosing
<u>2016</u> (1,2)	13.4 years	2.9 years	4.6 years	Stopped Disclosing	Stopped Disclosing
<u>2015</u>	12.35 years	2.86 years	4.18 years	2.00 years	4.24 years
<u>2014</u>	10.29 years	2.21 years	6.12 years	2.00 years	4.24 years

#### Each Annual Report, XPO Offers Amortization Projections In Its Footnotes: Actual Results Well Below Estimates

Year	2016E	2017E	2018E	<b>2019</b> E
2015	\$201.3	\$187.4	\$179.0	\$172.7
2016		\$161.0	\$153.5	\$147.4
2017			\$160.4	\$154.0
Actual Amort.	\$174.4	\$164.0	N/A	N/A
Dil. EPS Impact	+\$0.14	+\$0.12	N/A	N/A

<sup>1)</sup> XPO stopped disclosing useful life estimations on quarterly basis in Q3'16 and now only reports it on an annual basis. They also stopped giving a quarterly breakdown related to computer software and capitalized internally-developed software as follows: "Depreciation of property and equipment and amortization of computer software was \$117.5 million and \$56.5 million for the three-month periods ended September 30, 2016 and 2015, respectively, and \$353.0 million and \$98.8 million for the nine-month periods ended September 30, 2016 and 2015, respectively. The net book value of capitalized internally-developed software totaled \$138.2 million and \$122.8 million as of September 30, 2016 and December 31, 2015, respectively."

<sup>2)</sup> XPO's Chief Accounting Officer left Nov 2016 according to his LinkedIn biography. Chief Legal Officer resigned 2/12/17, 8-K





## XPO Manipulating Tax Assumptions?

More evidence that XPO's income statement doesn't reflect true economic reality can be seen by a close examination of its income tax representations. XPO has recognized a cumulative income tax benefit of \$132m since Jacob's joined, while paying \$182m in actual cash taxes! We estimate the cumulative earnings benefit has been \$1.55 share.

Warning From URI: "In addition, the Company improperly accounted for other items that overstated net income, including the estimation and recording of self-insurance reserves, its recognition of equipment rental revenues, and its income tax accounting."

Source: SEC URI Complaint 2008

#### Material Divergence Between XPO's Income Statement Taxes and Cash Taxes Paid

\$ mm, except shares + per sh.	Location	2012	2013	2014	2015	2016	2017	Q1′18	Q2′18	Q3′18	Cumulative
Tax Benefit (Expense)(A)	Income St.	\$11.2	\$22.5	\$26.1	\$90.9	(\$22.3)	\$99.5	\$0.2	(\$54.2)	(\$41.0)	+\$132.9
Cash Taxes Paid (B)	Bottom of Cash Flow St.	(\$0.2)	(\$0.2)	(\$2.3)	(\$14.5)	(\$40.7)	(\$78.5)	(\$3.3)	(\$23.2)	(\$19.4)	(\$182.3)
Difference (A + B)		\$11.0	\$22.3	\$23.8	\$76.4	(\$63.0)	\$21.0	(\$3.1)	(\$77.4)	(\$60.4)	(\$49.4)
Impact to Dil. EPS Diluted Shares	Income St.	15.7	22.8	53.6	92.8	122.8	127.8	133.4	134.1	136.6	
per share		\$0.70	\$0.99	\$0.44	\$0.92	(\$0.51)	(\$1.33)	(\$0.02)	(\$0.58)	(\$0.55)	+\$1.55

Source: XPO Financial statements



### What's XPO's Real Share Count?

In our opinion, we do not believe the market is accurately evaluating XPO's diluted share count. We conducted a forensic review, and find that XPO has vastly reduced its disclosures about the potential impact of dilutive securities, an indication that XPO may not want investors to know. We believe XPO's Series A Convertible Preferred should be considered outstanding and dilutive considering its conversion price is \$7.00 per share, significantly below the current trading price.

### **XPO Stopped Its Detailed Disclosure of Diluted Shares Q1'16**

# XPO Logistics, Inc. Consolidated Calculation of Diluted Weighted Shares Outstanding (Unaudited)

(Unaudited)		
	Three Months Er	ided March 31,
	2016	2015
Basic weighted-average common shares outstanding	109,628,094	78,825,639
Potentially Dilutive Securities:		
Shares underlying the conversion of preferred stock to common stock	10,412,143	10,476,430
Shares underlying the conversion of the convertible senior notes	3,180,806	5,171,353
Shares underlying warrants to purchase common stock	7,557,370	8,776,365
Shares underlying stock options to purchase common stock	570,684	633,392
Shares underlying restricted stock units and performance-based restricted stock units	1,607,032	1,025,632
	23,328,037	26,083 172
Diluted weighted-average common shares outstanding	132,956,131	104,908,811

Source: XPO Press Release Q1 2016

### Fast Forward A Year....No Potential Impact

	+ (	Three Months	ree Months Ended March 31,		
(In millions, except per share data)		2017		2016	
Basic earnings (loss) per common share					
Net income (loss) attributable to XPO	S	21.3	S	(22.5)	
Cumulative preferred dividends		(0.7)		(0.7)	
Non-cash allocation of undistributed earnings		(1.1)		-	
Net income (loss) allocable to common shares, basic	S	19.5	s	- (23.2)	
Basic weighted-average common shares		111.4		109.6	
Basic earnings (loss) per share	S	0.18	S	(0.21)	
Diluted earnings (loss) per common share					
Net income (loss) allocable to common shares, basic	S	19.5	S	(23.2)	
Interest from Convertible Senior Notes		0.3		_	
Actincome (loss) allocable to common shares, diluted	S	19.8	S	(23.2)	
Basic weighted-average common shares		111.4		109.6	
Dilutive effect of non-participating tock-based awards and Convertible Senior Notes		13.0		_	
Diluted weighted-average common shares		124.4		109.6	
Diluted earnings (1988) per shirts	S	0.16	s	(0.21)	
Potential common shares excluded		10.3			

Certain shares were not included in the computation of diluted earnings per share because the effect was anti-dilutive

Source: XPO 10-Q Q1 2017



### Brokers Can't Get The Share Count Correct

It's hard to value XPO correctly when the smartest guys on Wall Street have no idea what XPO's true share count is, and conveniently ignore the deep in-the-money Series A Convertible Preferred Stock.

### RF Lafferty, Initiation July 2018

	2016A	2017A	- 13	2018E	1.5	2019E
Revenue	\$ 14,619	\$ 15,381	\$	18,303	\$	20,134
Operating Income	\$ 488	\$ 632	\$	879	\$	1,107
Adj. EBITDA	\$ 1,248	\$ 1,364	\$	1,632	\$	1,893
Net Income	\$ 76	\$ 326	\$	458	\$	624
EPS	\$ 0.62	\$ 2.55	\$	3.36	\$	4.49

### JP Morgan, Nov 2018

Company Data	
Price (\$)	86,99
Date Of Price	01 Nov 18
52-week Range (\$)	116.27-68.58
Market Cap (\$ mn)	11,882.83
Fiscal Year End	Dec
Shares O/S (mn)	137
Price Target (\$)	130.00
Price Target End Date	31-Dec-19

Analyst's EPS implies 136.6m shares outstanding

### **Jefferies Initiation, Oct 2018**

	2018E
Revenue	17,608
Operating income	840
margin (%)	4.8
Working capital	-261
Taxation	-125
Stock compensation + other	135
Depreciation & amortisation	690
Capex	-475
Free cash flow	804
change y/y (%)	44.9
Discounted free cash flow	741
PV projected free cash flow	8,791
Continuing value	12,896
Enterprise value	21,687
Net debt FY17	-4,124
Minority interest	-800
Equity value	16,721
Fully diluted nr of shares (m)	133.9
Equity value per share (\$)	124.9
% upside	9.4

Why is this analyst using FY17 net debt which is 10 months stale, and deducting minority interest at 2x book value?
Why ignoring the convertible preferred?



### Aggressive Lease Usage

XPO makes aggressive use of off-balance sheet leases relative to its larger and better credit worthy peers.

Companies like FedEx and UPS use operating leases for more capital intensive assets such as airplanes and related facilities, whereas XPO has none. New accounting guidance could require XPO to recognize these lease on its balance sheet next year, though it claims to still be evaluating the issue.

"In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842). The core principle of Topic 842 is that a lessee should recognize the assets and liabilities that arise from leases, including operating leases. Under the new requirements, a lessee will recognize in the balance sheet a liability to make lease payments (the lease liability) and the right-of-use asset representing the right to the underlying asset for the lease term.... The standards are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating the effects these ASUs will have on its Condensed Consolidated Financial Statements and related disclosures. As of December 31, 2017, the Company reported \$1,978.5 million in operating lease obligations and will evaluate those contracts, as well as other existing arrangements, to determine if they qualify for lease accounting under the new standards. The Company does not plan to adopt the standards early"

\$ in mm	Company Reported Financials						As a 🤋	% of Total L	eases			
Company Moodys/S&P	Operating Lease	Capital Lease	Total Leases	Book Equity	Tang Assets	Sales	EBITDA	Total Assets	Tang. Assets	Book Equity	EBITDA	Sales
FedEx Corp Baa2/BBB	\$18,102	\$71	\$18,173	\$19,416	\$44,448	\$71,323	\$7,965	35%	41%	94%	228%	25%
XPO Ba2/BB	\$1,979	\$267	\$2,245	\$4,590	\$6,883	\$17,463	\$1,360	18%	33%	49%	165%	13%
United Parcel A1/A+	\$1,637	\$563	\$2,200	\$3,126	\$40,794	\$72,079	\$9,811	5%	5%	70%	22%	3%
Knight Swift	\$480	\$159	\$639	\$5,396	\$3,581	\$5,363	\$800	8%	18%	12%	80%	12%
J.B. Hunt Corp Baa1/BBB+	\$92	\$0	\$92	\$2,033	\$4,722	\$8,612	\$1,007	2%	2%	4%	9%	1%
Schneider	\$112	\$9	\$121	\$1,993	\$3,342	\$4,976	\$559	3%	4%	6%	22%	2%
C.H. Robinson Baa2/BBB+	\$283	\$0	\$283	\$1,518	\$3,107	\$16,760	\$868	6%	9%	18%	33%	2%
Expeditors	\$250	\$0	\$250	\$1,893	\$3,327	\$8,052	\$750	7%	8%	13%	33%	3%
	Average Among Peers								15%	33%	74%	8%

Source: Company financials and Bloomberg



### Do What I Say, Not What I Do.....

"If you can create a culture where people are motivated, inspired, incentivized, rewarded, to be honest with each other you can move mountains" -CEO Brad Jacobs Auto Logistics Conference Sept 21, 2016





Date	Source	Quotes About Jacobs and XPO Practices
Oct 2, 2018	Int'l Brotherhood of Teamsters	"The workers want a legally binding process to hold XPO accountable for the mistreatment," said Bill Hamilton, President of Local 107 in Philadelphia. "They are also concerned about the loss of work to subcontractors delivering goods directly to customers, known as last mile drivers."
Apr 16, 2018	International Transport Workers' Federation	"It is now clear that the problems in XPO are not limited to the American workforce. XPO Logistics is a rotten employer all over Europe, and this is a priority for unions in France, Spain, Belgium, the UK and across the EU. By standing together, we can stop the rot at XPO in Europe, and make the company change its ways in the US"
<u>April 11, 2018</u>	Int'l Brotherhood of Teamsters	"XPO's arrogance and repeated labor law violations has gone on for far too long. These drivers courageously took action and let the company know workers are no longer going to sit and watch the company violate their rights. We are proud of these workers and Local 769 is fully committed to fighting alongside them until justice is won at XPO," Josh Zivalich, president of Teamsters Local 769
Nov 20, 2017	Int'l Brotherhood of Teamsters	"XPO is mistreating us by refusing to come to the table more than a year after we voted to organize as Teamsters, which is completely unacceptable"
MAY 10, 2017	Int'l Brotherhood of Teamsters	"It is time for XPO CEO Bradley Jacobs to explain to company workers why he is entitled to a huge payout while he cuts the health care and retirement benefits of workers who are making this company so successful," said Monica Abraham, a quality control inspector for XPO in North Haven, Conn. who spoke at the shareholder meeting. "Workers shouldn't be punished while Jacobs gets rich off our backs!"
June 15, 2017	Int'l Brotherhood of Teamsters	"While Jacobs received \$20 million mega-equity, got approval for a \$110 million stock-bonus plan and has received a 481-percent bump in pay in recent years, workers are denied affordable health care, have no retirement security and the company is stomping on their federally protected rights to form their union," said Ernie Soehl, Director of the Teamsters National Freight Division.  "Workers have demanded a meeting with Jacobs, which is why Teamsters are here today, but Jacobs continues to refuse to meet over serious issues with workers."



CEO Jacob's Web of Associates Leads To Ridiculous Governance And Egregious Insider Enrichment Practices



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 258 of 315 PAGEID #: 4733 A Careful Look At XPO'S CEO Jacobs And His Business Associates Raises Multiple Red Flags

XPO's CEO Brad Jacobs Known Business Associates Include Two Convicted Felons, A Director Whose Firm Was Just Sanctioned By FINRA, And An Audit Committee Director With A Role Promoting A \$700M+ Ponzi Scheme

Jacobs Related Company	John Milne	Michael Nolan	G.C. Andersen	Adrian Kingshott	Jason Papastavrou / Oren Shaffer	Troy Cooper	Chris Brown
United Rentals (URI)	<ul><li>Founder</li><li>Chief Acquisition Officer</li><li>CFO (2003-2005)</li></ul>	CFO since inception through 2002	His firm's website says he was instrumental in the growth of United	<ul> <li>Former Goldman Sachs MD during a period it did business with URI</li> </ul>	Jason P:     Director since 2005     Currently on the Audit Committee	VP and Group Controller 1997-2009	United Rentals, VP and Assistant Controller 2005-2014
United Waste Systems (UWS)	Vice Chairman and Chief Acquisition Officer (1993-1997)	CFO since inception	Waste Systems and United Rentals • Served on UWS Board			• Division Controller 1996-1997	
XPO Logistics (XPO)			• Director (2011-16)	Audit Committee     Member	<ul> <li>Jason P: Past Audit Committee Chair</li> <li>Oren: Current Audit Committee Chair</li> </ul>	<ul><li>XPO President</li><li>COO 2014-2018</li><li>SVP of Operations 2011-2014</li></ul>	VP of Financial Reporting and Technical Accounting
Terex Corp	URI to meet its earni fraudulent transaction	r two year-end re undertaken to allow	<ul> <li>Joined the Terex Board in 1992</li> <li>Lead Director: 2006-2015</li> <li>Mysteriously left the Board in 2017</li> </ul>		Oren: Joined the Board in 2007 and sits on the Audit Committee and Chair of the Comp Committee		
Serious Concern / Association With Financial Disaster	Convicted Felon and architect of the URI / Terex fraud Recently worked on private placement transactions for G.C. Andersen, and sent back to jail in April 2018 for not paying restitution despite having the capacity to pay	Convicted Felon and co-conspirator in the URI / Terex accounting fraud	<ul> <li>Recently left XPO's         Board during a         period that         coincided with an         undisclosed FINRA         sanction of his firm</li> <li>Hired felon John         Milne to work on         private placement         transactions, during         a period that XPO         was in the market</li> </ul>	<ul> <li>Undisclosed involvement in the \$700m+ Marc Drier Ponzi Scheme</li> <li>Kingshott was an agent selling Drier's notes and court documents suggest he was aware and should have known it was a Ponzi scheme</li> </ul>	<ul> <li>Jason served on the URI Board while Jacobs was Chairman</li> <li>XPO says he is independent</li> <li>Oren is currently 75 years old, does he have a mandatory retirement age?</li> </ul>	Long-time Jacobs associate who worked at defunct auditor Arthur Andersen (1991-1993)	Xerox, Corporate     Finance Manager     2002-2005     KPMG Senior Manager,     Assurance 1995-2002     SEC Charges KPMG     \$22M To Settle SEC     Litigation Relating To     Xerox Audits from     1997-2000  41

Source: SEC.gov

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 259 of 315 PAGEID #: 4734/1: Beware of the Company You Keep....

History does not bode well for the subsequent owners of Jacob's led M&A hype machines. Two of Jacobs colleagues from United Waste Systems and United Rentals were charged by the SEC and Justice Dept. for financial fraud. John Milne was Vice Chairman, and Chief Acquisition officer of United Rentals since its acquisition in Sept 1997. He held the same role at Jacob's United Waste Systems from 1993 to 1997. He was sentenced to prison. Michael Nolan was also charged for his role at United Rentals, where he had been the CFO since its formation. He was also the CFO of United Waste Systems from 1994-1997

### **United Waste Systems** In July 1989, Jacobs founded United Waste Systems in Greenwich, Jacob's Roll-up Connecticut, planning to consolidate small garbage collectors that had overlapping routes in rural areas. Jacobs served as chairman and CEO, and in 1992 he took the company public on the NASDAQ. In August 1997, after the company had made more than 200 acquisitions, Jacobs sold United Waste Systems to USA Waste Services Inc. (now known as Waste Management, Inc.) for \$2.5 billion "The Merger Agreement provides that, at the Closing, USA Waste will offer to enter into Consulting Agreements with each of Bradley S. Jacobs, John M. Milne and Michael J. Nolan" Deal Proxy Waste Management Founder, Five Other Former Top Officers Sued for Massive Fraud Financial Outcome Defendants Inflated Profits by \$1.7 Billion To Meet Earnings Targets; Defendants Reap Millions in Ill-Gotten Gains While Defrauded Investors Lose More Than 56 Billion FOR IMMEDIATE RELEASE 2002-44 Washington, D.C., March 26, 2002 — The Securities and Exchange Commission filed sult today against the founder and five other former top officers of Waste Management Inc., charging them with perpetrating a massive financial fraud lasting more than five years. The complaint, filed in U.S. District Court in Chicago, charges that defendants engaged in a systematic scheme to falsify and misrepresent Waste Management's financial results between 1992 and 1997.

In Sept 1997, Jacobs formed United Rentals, serving as the new company's chairman and CEO. As with United Waste, Jacobs planned to grow United Rentals through a rollup strategy, consolidating small equipment rental dealers across North America. URI went public in Dec. 1997, and began trading on the New York Stock Exchange.

**United Rentals** 

Jacobs stepped down from United Rentals in August 2007

### SEC Charges

#### United Rentals, Inc. to Pay \$14 Million to Settle Financial Fraud Charges

FOR IMMEDIATE RELEASE 2008-190

Washington, D.C., Sept. 8, 2008 - The Securities and Exchange Commission today charged one of the world's largest equipment fental companies, United Rentals, Inc. (URI), with engaging in fraudillent transactions to meet company earnings forecasts and analyst expectations. The SEC also charged the company with a broad range of other improper accounting practices.

Source: SEC.gov

### John Milne To Jail



Source: Justice.gov

### Michael Nolan Sentenced



Source: FBI

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Professional	XPO Current Position	United Rentals / United Waste Past Association
Troy Cooper	<ul><li>XPO President</li><li>COO 2014-2018</li><li>SVP of Operations 2011-2014</li></ul>	<ul> <li>United Rentals, VP and Group Controller 1997-2009</li> <li>United Waste Systems, Division Controller 1996-1997</li> <li>Arthur Andersen 1991-1993</li> </ul>
Chris Brown	VP of Financial Reporting and Technical Accounting	<ul> <li>United Rentals, VP and Assistant Controller 2005-2014</li> <li>Xerox, Corporate Finance Manager 2002-2005</li> <li>KPMG Senior Manager, Assurance 1995-2002</li> <li>SEC Charges KPMG \$22M To Settle SEC Litigation Relating To Xerox Audits from 1997-2000</li> </ul>
David Papa	Director, Corporate Accounting	<ul> <li>United Rentals, Director Accounting 2007-2016</li> <li>Manager Financial Reporting and Research 2004-2007</li> <li>KPMG Senior Accountant, 1991-1994 (Stamford CT)</li> </ul>
Lisa Reynolds	Senior Manager, Finance Integration and Business Process	<ul> <li>United Rentals, Finance Manager 2006-2007</li> <li>United Rentals, Accounting Manager 2004-2006</li> </ul>
Chris Duffell	<ul><li>VP of Finance</li><li>Director FP&amp;A 2012-2014</li></ul>	<ul> <li>United Rentals, Snr Manager 2005-2012</li> <li>United Rentals, District Controller 2005-2011</li> </ul>
Carrage Links allo		

Source: LinkedIn



### Chief Accounting Officer Concerns

XPO is not shy about hiring Chief Accounting Officers with a history of working at companies known for aggressive accounting practices. Both of its CAO's worked at General Electric (GE), which is currently under investigation by the SEC for accounting practices at its Power division. In addition, the current CAO worked at defamed Arthur Andersen.

Chief Accounting
Officer
Lance Robinson
Sept 2015 –
Present

Chief Accounting Officer

Lance Robinson is responsible for the financial strategy, risk management, external financial reporting and control systems of XPO's global accounting and financial reporting operations. He has extensive senior financial experience, including 13 years with General Electric. While with GE, he served as global controller—mergers and acquisitions and as chief accounting officer for NBC Universal, and was a member of both the Business Development Council and the Controllership Leadership Council Earlier, he was a senior manager in the Transaction Advisory Services Group at Arthur Andersen. Mr. Robinson holds a bachelor of commerce degree from Natal University, South Africa, and an MBA degree from the Stern School of Business at New York University. He is a member of the AICPA Business Combinations Task Force, and is a certified public accountant (USA), a chartered accountant (RSA) and a chartered global management accountant.

Chief Accounting
Officer
Kent Renner
Dec 2011 –
Nov 2016 (1)

Source: XPO website and 8-K

BUCHANAN, Mich.--(BUSINESS WIRE)—XPO Logistics, Inc. (NYSE Amex: XPO) today announced that Kent Renner has been appointed senior vice president—chief accounting officer, effective January 5, 2012. He will be responsible for the company's external financial reporting, accounting operations, financial systems and internal controls.

Mr. Renner was most recently global controller with GE Energy Services, Inc., a \$16 billion revenue division of General Electric Company. Previously, he held positions as assistant corporate controller with The Home Depot, Inc., and senior manager with PricewaterhouseCoopers.

Mr. Renner holds a master's degree in accounting from the University of North Carolina at Chapel Hill, and degrees in economics and business management from North Carolina State University. He is a certified public accountant.

Source: XPO Press Release

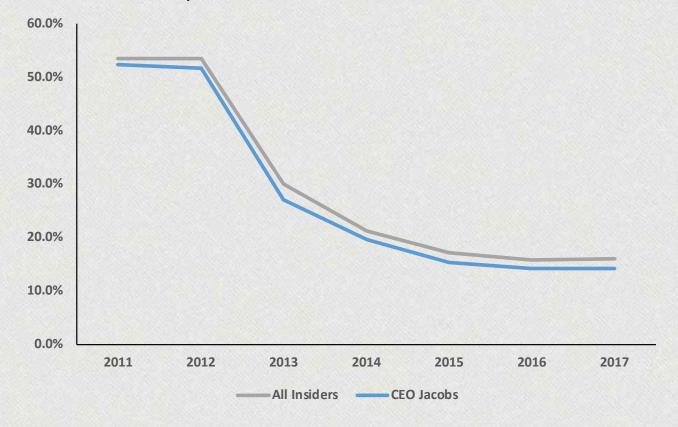
<sup>1)</sup> Renner's LinkedIn bio says he was employed at XPO until Nov 2016



### Jacobs Rapidly Diluting His Stake

We are not surprised to see XPO management starting to engage in more aggressive accounting and business practices now that it has less and less at risk in the venture. On the next slide, we will show how more of Jacob's economic are tied to a non-industry standard and aggressive metric inherently open to financial engineering.

### **Beneficial Ownership of XPO Insiders**



Source: Annual Proxy Statement



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 263 of 315 PAGEID #: 4738. JCE POINT MANAGEMENT Ignore Return on Capital Investment



XPO conveniently ignores return on capital as a key metric to compensate management, and has defined its own flawed and aggressive financial metrics. Each of XPO's peers consider return on capital for executive comp.

Company	Short Term Incentive	Long Term Incentive			
XPO Logistics	<ul> <li>Adjusted EBITDA (ex divestitures)</li> <li>Organic Revenue Growth</li> <li>Free Cash Flow</li> <li>Annual Total Shareholder Return</li> <li>Also evaluated and certified goal attainments associated with previously-awarded stock grants that had vesting events relevant to performance year 2017:</li> <li>Adjusted Free Cash Flow Per Share</li> <li>Adjusted EPS</li> <li>Stock Price at \$60 or above for 20 consecutive days prior to April 2, 2018</li> <li>Unusual condition</li> </ul>	The NEOs were granted PRSUs in 2016 with performance goals based on annual adjusted cash flow per share for the multi-year period from 2016 to 2019  No Return on Capital Measure Adjusted Cash Flow Per Share = Made-Up Non-Standard Metric = Adjusted EBITDA (determined in accordance with the company's monthly operating reports and for external reporting purposes and adjusted for the impact of stock and phantom stock compensation) less any capital expenditures and interest divided by (ii) diluted shares outstanding.			
UPS	Revenue Growth Adjusted EPS Growth Avg Daily Package Volume Growth	Revenue Growth  Operating Return on Invested Capital  Relative Total Shareholder Return			
Knight-Swift	Adjusted EPS and growth  Return on Net Tangible Assets	Adjusted EPS CAGR Adjusted Trucking Operating Ratio			
FedEx	Adj Operating Income, but the Committee may adjust amounts paid based on <u>return on invested capital</u> , among other criteria	Three Year Adj EPS Growth			
Schneider	Revenue Growth EBIT Growth	5 year Compounded Net Income Growth <u>5 Year Average Return on Capital</u>			
Ryder	Earnings Before Tax (EBT) EPS from continuing operations	50% on Total Shareholder Return  50% Adjusted Return on Capital			
JB Hunt	Operating Income Annual Revenue Growth (ex: fuel surcharges) Annual EBT Growth	Performance goals must be based on one or more criteria approved by the MIP (e.g., revenue, operating income, <u>return on assets</u> )			

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In our opinion, XPO's "Adjusted Cash Flow Per Share" bonus metric is a meaningless target because it doesn't measure return on capital deployed. (1) XPO's egregious insider enrichment practices also extend to its Board approving special bonuses for completion of the ND acquisition. So in other words, management was paid for doing its job. (2)

### **CEO Jacobs Compensation**

Year	Salary	Bonus	Stock	Option	Non-Equity	Other	Total
2011	\$154,212	\$162,265	\$464,000	\$1,111,998		\$25,000	\$1,917,475
2012	\$495,000		\$1,876,800			\$2,000	\$2,373,800
2013	\$495,000				\$495,000	\$2,000	\$992,000
2014	\$495,000		\$2,802,536		\$585,000	\$2,105	\$3,884,641
2015	\$495,000		\$2,948,108		\$2,325,000	\$3,614	\$5,771,722
2016	\$607,000	\$1,375,000	\$19,999,992			\$2,456	\$21,984,448
2017	\$625,000		<i>j</i>		\$750,000	\$9,021	\$1,384,021
Total	\$3,366,212	\$1,537,265	\$28,091,436	\$1,111,998	\$4,155,000	\$46,196	\$38,308,107

Source: XPO Proxy Statement

Largest component of Jacob's compensation is tied to a non-standard metric that imparts no measure of economic value creation. Even worse, XPO won't provide the exact detail of the calculation.

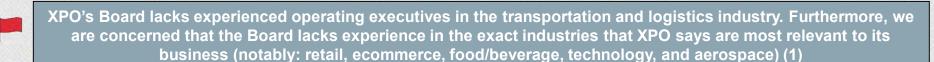
Year	Adj. Cash Flow / Share Target	Surpass Target According To Proxy?	Provide Exact Calculation To Investors
2016	\$2.93	YES	NO
2017	\$3.96	YES	NO
2018	\$5.38		
2019	\$6.39		

The metric is a defined as: Adjusted EBITDA (determined in accordance with the company's monthly operating reports and for external reporting purposes and adjusted for the impact of stock and phantom stock compensation) less any capital expenditures and interest divided by (ii) diluted shares outstanding.

Source: 8-K XPO's CFO and Chief Strategy Officer paid special bonuses for completing the ND deal



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed; 12/23/21 Page: 265 of 315 PAGEID #: 4740 Relevant Industry Experience



		Committee						
Director	Work History	Audit	Acquisition	Nominating	Compensation			
Adrian Kingshott	<ul><li>CEO of Adson LLC</li><li>Senior Advisor to Headwaters Bank</li></ul>	X	X		Х			
Gena Ashe	<ul> <li>Adtalem Global Education</li> <li>Legal roles BrightView Landscapes</li> <li>Catalina Marketing Corporation</li> <li>Public Broadcasting Service (PBS)</li> <li>Darden Restaurants, Inc.</li> <li>Lucent Technologies, Inc. and AT&amp;T</li> </ul>			X				
AnnaMaria Desalva	<ul> <li>DuPont, CCO</li> <li>Head of Corporate Affairs, Pfizer</li> <li>Advisor to the U.S. FDA</li> <li>Hill &amp; Knowlton, healthcare</li> <li>Public Affairs, Bristol-Myers Squibb</li> </ul>							
Michael Jesselson	<ul> <li>CEO of Jesselson Capital since 1994</li> <li>Worked at Philipp Brothers and at its division, Salomon Brothers Inc</li> </ul>			Х	Х			
Jason Papastavrou	<ul> <li>CEO ARIS Capital Management</li> <li>Co-Founder Empiric Asset Mgmt.</li> <li>HF Strategies at Bank of America</li> </ul>	X	X	Х	Х			
Oren Shaffer	<ul> <li>Vice chairman and chief financial officer of (now CenturyLink)</li> <li>COO of Sorrento Networks, Inc.</li> <li>CFO of Ameritech Corporation</li> <li>Senior executive Goodyear Tire</li> </ul>	X			X			

1) XPO's 10-K, p.3



about an SEC charged

broker Kovachev

## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 266 of 315 PAGEID #: 4741 Undisclosed Involvement In A Ponzi Scheme By XPO Audit Committee Member: Adrian Kingshott

was allowing him, as a favor, to run the program with little oversight by Solow as a way to

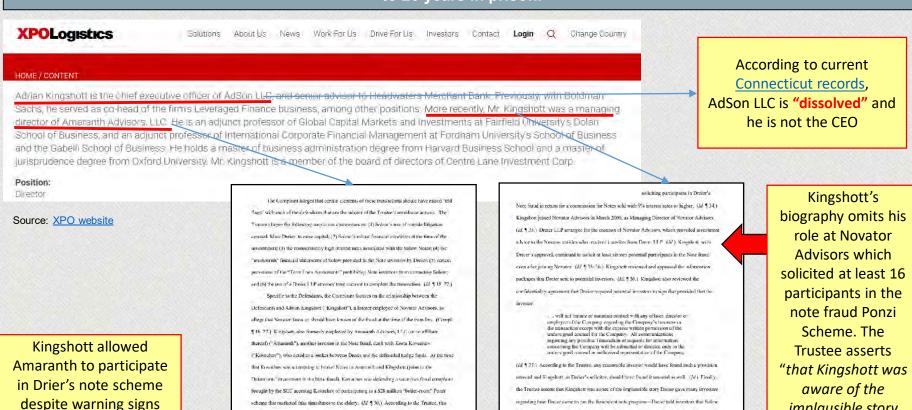
develop circuts. (4d. § 38.) The Trustee essens that Kingsbott should have questioned inc

legitimacy of the proposed transaction and it is "absurd for any company in Solow"s position to

entrust a pole program and the debt of the company, with limited operational oversight, to an

acturacy as a fever to help the acturacy descine business." (M/) The Trustee asserts that

XPO's Kingshott materially misrepresents his role as CEO as Adson LLC and omits his role as owner of Novator Credit Advisors LLC, an entity linked to the \$700m fraudulent note scheme by Marc Drier, who was sentenced to 20 years in prison.



Source: US Bankruptcy Court: Drier LLP (debtor), Novator Credit Management (defendant)

"Lawyer gets 20 Years in \$700 Million Fraud", NY Times, July 13, 2009 Adrian Kingshott as Sole Member owner of Novator Credit Advisors, LLC, Connecticut Business Records

Amaranth invested in the Note fraud (Id. § 32.)

information was public and available on the SEC's website during Kangalasti's and Amaranth'

the dings with Knowless, and Know host had actual notice of the SEC set argue against Knowless

after energing Kraff in some ones or investigate Kovaches. (Id. ( 17-32.) The Trustee is energle

that even after having "actual knowledge" of Kovachev's involvement in a Ponzi schange

implausible story

Drier gave many

investors."



# Case: 2:17-cv-00719-SMP-CK3-DDi#e25t3/Filefire3/A1Cepa-Victe3/FEASAIDT 4/Work on Private Placement Transactions During A Period XPO Was Actively Issuing Private Placements...Coincidence?

Spruce Point has additional concerns about XPO's former Director G.C. Andersen, who served on the Board from 2011-2016 and claimed to be "Independent". Andersen also served on the Board of Jacob's previous venture United Waste Systems, and his website touts the firm's "roots fed the success of companies such as United Rental, United Waste, XPO Logistics". (1) We uncovered a recent FINRA action in June 2018 against Andersen's firm, which revealed he hired a known convicted felon dubbed "JM" to work on private placements at the same time XPO raised over \$3.6 billion through various private placement offerings. XPO would later disclose in 2016 that it evaluated "commercial transactions" with an entity Andersen was a director (presumably his own company).

"For Mr. Andersen, those relationships included ordinary course commercial transactions between our company and an entity for which Mr. Andersen is a director." Source: XPO 2016 Proxy Statement, p.18

#### FINANCIAL INDUSTRY REGULATORY AUTHORITY LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. 20160476246 03

- TO: Department of Enforcement Financial Industry Regulatory Authority ("FINRA")
- RE: G.C. Andersen Partners Capital, LLC BD No. 44631

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, G.C. Andersen Partners Capital, LLC ("Respondent," "GC Andersen," or the "Firm") submits this Letter of Acceptance, Walver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not be sufficiently any future actions against the Respondent alleging violations based on the same factual findings described herein.

I.

#### ACCEPTANCE AND CONSENT

Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

#### BACKGROUND

GC Andersen has been a member of FINRA since 1998. The Firm employs approximately 10 registered individuals, and maintains four offices with its main office in in New York, New York. The Firm provides M&A advisory, restructuring, and capital raising advisory services.

#### RELEVANT DISCIPLINARY HISTORY

GC Andersen has no relevant disciplinary history with the Securities and Exchange Commission, any state securities regulator, FINRA, or any other selfregulatory organization.

#### OVERVIEW

From March 2014 through August 2017 (the "Relevant Period"), GC Andersen associated with JM, an individual the Firm knew to be statutorily disqualified, in violation of FINRA By-Laws Article III, Section 3(b) and FINRA Rules 8311 (for the period from August 24, 2015 to August 2017) and 2010. Also, during the Relevant Period, OC Anderson permitted JM to engage in activities requiring registration, including investment banking activities in connection with several Firm privite placements, even though the van not registered with FINRA in any capacity, in violation of NASD Membership and Registration Rules 1031 and 1032 and FINRA Rule 2010.

#### FACTS AND VIOLATIVE CONDUCT

In March 2014, JM began providing work for the Firm in connection with various Firm private placements. The Firm knew that JM was statutorily disqualified due to a felony conviction in 2009. Nevertheless, JM participated in the Firm's investment banking business until the Firm terminated its relationship with JM in August 2017.

#### Association with a Statutorily Disqualified Individual

Article III, Section 3(b) of FINRA's By-Laws prohibits member firms from associating with an individual in any capacity if that individual has been statutorily disqualified. FINRA Role 8311, effective August 24, 2015, fikewise provides that "a member shall not allow [a disqualified] person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity."

Under FINRA's By-Laws, a "person is subject to a 'disqualification' with respect to membership, or association with a member, if such person is subject to any 'statutory disqualification' as such term is defined in Section 3(e)(39) of the [Exchange] Act." A mong the statutorily disqualifying events in Section 3(e)(39) of the Exchange] Act is any felony conviction in the prior ten years. In 2009, JM pleaded guilty to felony conspiracy. Thus, during the Relevant Period, JM was statutorily disqualified. A FINRA member may not associate with a disqualified person in any capacity unless and until approved in an eligibility proceeding triggered by the member's submission of an Mc-400 Application

The FINRA By-Laws, at Article 1, Section 1, define "f)plerson associated with a member" to include "a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member..." The By-Laws define "investment banking or securities business," in relevant part, as "purchasing securities and offering the same for sale as a dealer."

JM participated in GC Andersen's investment banking business by advising on investment banking transactions, creating marketing materials, contacting potential investors, revising and distributing transaction documents, and conducting due diligence on target companies. Additionally, JM was controlled by the Firm as the Firm and its registered persons: provided JM with work

FINRA By-Laws Article III, Section 4.

2

G.C. Andersen's firm employed a known felon to assist in "private placements" from 2015-2017.



### XPO Private Placements During Same Time Period (March 2014 – Aug 2017) Associated With "JM"

(	/ tag =0 / / toooo		
Issue Date	Private Placement	Amount	Interest Rate
8/25/14	Snr. Notes due 2019	\$500m	7.875%
2/3/15	Snr. Notes due 2019	\$400m	7.875%
5/29/15	Series C Convertible Perpetual Preferred	\$562m	
6/4/15	Snr Notes due 2022	\$1,600m	6.5%
6/4/15	Snr Notes due 2021	EUR 500m	5.75%
<u>8/25/16</u>	Snr Notes due 2023	\$535	6.125%

XPO conducted no more private placements afterwards. JM's relationship was terminated with G.C. Andersen Aug '17



### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 268 of 315 PAGEID #: 4743 Former United Rentals Executive

John Milne, former President and CFO of United Rentals, was sentenced to 27 months in prison for conspiring to falsify books and records in March 2010 and was ordered to pay financial restitution. (1) Earlier this year in April 2018, Milne was ordered back to prison for failing to paying back the money, despite the court's belief he had capacity to do so. (2) In the interim, he acted as a financial consultant on various "private placement" transactions for XPO's Director G.C. Andersen.

that challenge and I really pride myself on how we were able to re-align the role and the definition of what the accountre-defined our team to be a partner to the field operations team, helping give them the tools to make the right decisions as a financial partner in the field, as opposed to being just a reporting entity. It was a change in definition of how business at United Rentals.

It was an unfortunate end that came about at United Rentals. There's not too much to elaborate on, it's all public information. I think the most important thing is what we accomplished while I was there and the phenomenal growth of the business we built and more importantly how I am using that total experience to bring perspective and knowledge to my clients today.

#### Let's go on to the present. You are working with G.C. Andersen Partners in what capacity?

I'm an independent consultant and I do a number of different things. Some management teams I'll be working with are not looking for financing, they're not looking to sell, they're not looking to buy, they're merely dealing with the issue of getting control on their growth. They're trying to get the house in order, putting in place information systems, HR systems, proper compensation plans, etc. So often times I'll be doing management type consulting. But a lot of times those sorts of roles are leading up to a capital markets transaction.

M&A advice that involve capital markets transactions, I have a relationship that dates back many years with G.C. Andersen. When there's a transaction where I need that capital market expertise or at least my client needs that capital market expertise, I'll often introduce them to G.C. Andersen and help them work together to get the deal done. and competitor. It really helped that I had seen Acme from

what's my strategy, how am I going to grow and differentiate me and my company from the landscape of national and ing and financial reporting group was at United Rentals. We regional and small private companies that I'm competing against day to day?" That's an important thing that every private company and every owner of a private company needs to be thinking about: what is my differentiation? An owner of a company needs to be able to explain that to we ran the business and I think it helped build a stronger anyone in a two-minute conversation. Because if they can't then they can be sure that their customers don't understand it, their employees don't understand it, their bankers, the Unfortunately your tenure at United Rentals didn't people who can provide them capital aren't understanding end so happily. Anything you'd like to share about it, and they could be heading their business into problems by getting distracted with things that are not core to their competency and success.

I would say that with these good times that we're all experiencing in the industry, it important for everyone to take pause and really try and find this answer. If they do, then they will be able to take advantage of the strength in the industry to execute on what they do well and build an even better and stronger business.

#### You played a major role in the \$109 million refinancing of Acme Lift. Can you tell us about that funding project?

I've known this company since the United Rentals days. At United Rentals we didn't always consider them our allies, since they often were providing big booms to small rental companies, but it's an amazing model and the team there has really built something unique. This business, with the new capital structure we helped put in place, is poised for some pretty significant growth over the next three to five

It was a complicated deal in that the capital markets hadn't seen this sort of rental business model before. So it And so when companies are looking for financing or was important to communicate effectively what the business did and how it differentiated itself in a sustainable business model from the rest of the rental industry. It just took a little more energy than normal to explain the nature of the business. I feel my history helped because when I was at United Rentals I had experienced Acme as both a customer



How was Milne earning income and spending on luxury services, and why would he rather go back to jail than to pay restitution? Is there more to the story?

"Since his release from prison in May 2012, MILNE has paid approximately \$500,000 of the \$5.25 million of disgorgement that was due. Chief Judge Hall found that, based on MILNE's income and expenditures on luxury services. personal items and travel, he had the ability to pay much more. The Court had previously continued the hearing on multiple occasions to provide MILNE the opportunity to make additional disgorgement payments, but he repeatedly failed to do so."

32 rer / february / 2015

www.rermag.com

Source: Rental Equipment Register, "Capitalizing for the Future: A Q&A with United Rentals co-Founder John Milne", Feb 20, 2015

- Former United Rentals President and CFO Sentenced to 27 Months in Prison for Falsifying Company Books, FBI.gov
- Former Rental Company Executive Sentenced to 2 Years in Prison for Violating Supervised Release, Dept. of Justice

# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 269 of 315 PAGEID #: 4744 CE POINT G.C. Andersen Also A Terex Director:

### Terex Has A Fraudulent History With Jacobs URI

If XPO didn't work with Andersen's firm to issue private placements, then it could have business dealings with Terex, where Andersen has long served as a Director according to his biography. Terex was also charged with fraud by the SEC for its dealings with Jacob's last firm United Rentals.

"For Mr. Andersen, those relationships included ordinary course commercial transactions between our company and <u>an entity for which Mr. Andersen</u> is a director." Source: XPO 2016 Proxy Statement, p.18

"G. Chris Andersen has served as a director of the company since September 2, 2011. Mr. Andersen is the founder and a managing partner of G.C.

Andersen Partners, LLC. Previously, Mr. Andersen served as vice chairman of PaineWebber, and as head of the Investment Banking Group at Drexel

Burnham Lambert Incorporated. Mr. Andersen is the lead director for Terex Corporation (Note: He Served On Terex's Board Since 1992). He is a member of the International Advisory Council of the Guanghua School of Management at Peking University; sits on the advisory board of the RAND Corporation's Center for Asia Pacific Policy; and is a director and member of the Executive Committee of Junior Achievement of New York. Mr. Andersen holds a master's degree from the Kellogg School of Management and is a chartered financial analyst." Source: XPO 2014 Proxy Statement

### Terex Charged With Fraudulent Dealing With United Rentals (Jacob's Last Firm)

### SEC Charges Terex Corporation With Accounting Fraud

#### FOR IMMEDIATE RELEASE 2009-183

Washington, D.C., Aug. 12, 2009 — The Securities and Exchange Commission today charged Terex Corporation, a Westport, Conn.-based heavy equipment manufacturer, with accounting fraud for making material misstatements in its own financial reports to investors, as well as aiding and abetting a fraudulent accounting scheme at United Rentals, Inc. (URI), another Connecticut-based public company.

#### Additional Materials

- > Litigation Release No. 21177
- > SEC Complaint

Terex has agreed to settle the SEC's charges and pay a penalty of \$8 million. The SEC <u>previously charged URI</u> with fraud as well as officers of URI and Terex.

"Terex is being charged with helping United Rentals pull off a sophisticated accounting scheme," said Fredric D. Firestone, Associate Director in the SEC's Division of Enforcement. "These two public companies inflated yearend results in order to mislead investors during a period of industry recession."

Source: SEC website

### A Simple CFA Search Shows No Record Of Andersen Currently Holding The CFA Title

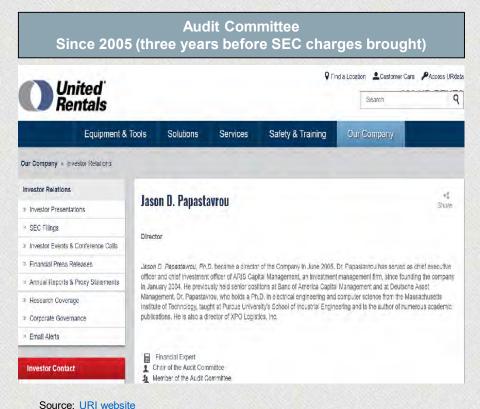
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Niels E. Andersen, CFA	LONDON			UNITED KINGSOM
Peter C. Andersen, GFA				
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Bryan Paul Angersen. D.A	EMBLEWOOD	50		JSA
Mark V. Angersen, CPA	LEXINGTON	MA		194
Karen S Andarsen CEA	CHICAGO	E		USA
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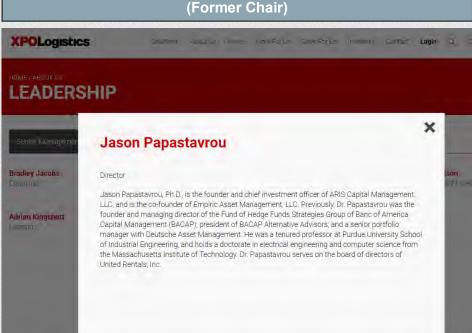
Source: CFA website



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/28/21 Page: 270 of 315 PAGEID #: 4745 Expert Another United Rental Ally

Though not implicated in the United Rentals scandal (the key elements of fraud occurred prior to his joining in 2005), it's worth considering that current XPO Audit Committee expert Jason Papastavrou also served for Jacobs at United Rentals on the Audit Committee. XPO's proxy statement calls Mr. Papastavrou "independent".





**Audit Committee Member Since 2011 Inception** 

Source: XPO website

### Case: 2:17-cv-00719-SDM-KAJ Dog #: 251-2 Filed: 12/23/21 Page: 271 of 315 PAGEID #: 4746 Business Interests of The CEO's Wife

Investors should be concerned that an XPO employee is signing business filings for the candy business of its CEO's wife. Furthermore, Jacob's wife founded a company called "Liberty Cars, LLC" on November 3<sup>rd</sup>, 2017. While we don't know the exact nature of this business, or have any proof of self-dealing, we do know the formation came around the time of XPO's Q3'17 earnings, and during a period where its financials started showing strain. In addition, XPO increased its pace of asset sales in the subsequent quarters and a majority of its assets are vehicles.

### Sugar and Plumm Holdings, Inc. http://www.concordisats.ctgovin. http://doi.org/10.1006/j.jcda.....18.commers.humbers21.5792.filmoTypes3 7 Principal Office in State of Formation (Foreign Corps Only): Changes 8. Attached hereto are the officers and directors of the corporation with their business and residence addresses XPO Legal 06/12/2019 10 Email Address Signing riina.tohvert@xpo.com 11. I hereby certify and state, under penalties of false statement, that all of the information set forth on this annual report is true. Thereby electronically sign this **Print Capacity** AUTHORIZED PERSON. Signature BITHA TOHVEET Report Officers/Directors FILING # 0006197977 FG 2 OF 2 Business ID . 1041327 VOL B-02547 PAGE 2924 FILED 06/12/2019 10:08 AM 1 Full Legal Name: LAMIA JACOBS CEO's PRES SEC DIR. Title(s): 350 ROUND HILL ROAD Residence Addr Wife CREENWIGH CT 06831 350 ROUND HILL ROAD Business Addr GREENWICH CT 06831

#### Formed when SECRETARY OF THE STATE OF CONNECTICUT XPO under stress, asset CERTIFICATE OF ORGANIZATION LIMITED LIABILITY COMPANY - DOMESTIC sales increase FILING PARTY (CONFIRMATION WILL BE SENT TO THIS ADDRESS): LIBERTY CARS LLC Mailing FILIDS #0005960584 EG 1 DF 2 350 ROUND HILL ROAD VOL 3402415 PAGE 2589 City: GREENWICH SILZE SF 11/63/2817 12:25 PM SECRETARY OF THE STATE OF CONNECTS State: Zip: 06831 1. NAME OF LIMITED LIABILITY COMPANY - REQUIRED: (MUST INCLUDE BUSINESS DESIGNATION LE LLC. L.L.C. ETC.) Z. LLC'S PRINCIPAL OFFICE ADDRESS - REQUIRED; (NO P.O. BOX) PROVIDE FULL ADDRESS. Street 350 ROUND HILL ROAD City: 06831 State 3. MAILING ADDRESS, REQUIRED - PROVIDE FULL ADDRESS (PO.BOX IS ACCEPTABLE) 350 ROUND HILL ROAD GREENWICH City: State: Zip: 06831 4. APPOINTMENT OF REGISTERED AGENT - REQUIRED: (COMPLETE A OR B NOT BOTH) PRINT OR TYPE FULL LEGAL NAME LAMIA JACOBS CONNECTICUT RESIDENCE ADDRESS (REQUIRED) P O BOX NOT ACCEPTABLE) 350 ROUND HILL ROAD 350 ROUND HILL ROAD GREENWICH GREENWICH Zip: 06831 Zip: 06831 Country: Country CONNECTICUT MAILING ADDRESS (REQUIRED) City: GREENWICH State: 06881

Source: Connecticut State "Liberty Cars, LLC"

Liberty Cars, LLC

Source: Connecticut State "Sugar & Plumm Holdings, Inc"

Note: investment made with Jacobs Private Equity email address



### Valuation And Downside



### 90% Implied Upside Is A Fantasy Target

Like any investment scheme, XPO needs to recruit more brokers to pump its stock to say "Buy"- but there aren't many left!

There are nearly as many analysts offering price targets on XPO as FedEx and UPS which are 5-7x larger companies.

Only two analysts are cautious, while a resounding majority are bullish and want investors to give XPO a premium multiple.

	<u></u>		<u> </u>
Analyst	Recent Action	Recommendation	Price Target
Jefferies	Recent initiation October	Buy	\$145
Thompson Davis		Buy	\$133
Barclays		Overweight	\$130
Seaport		Buy	\$130
JP Morgan		Overweight	\$130
Morgan Stanley	Up from \$125	Overweight	\$128
RF Lafferty	Recent Initiation July	Buy	\$125
Goldman Sachs	Down from \$126	Buy	\$124
Credit Suisse	Down from \$125	Outperform	\$119
Wells Fargo		Outperform	\$115
Oppenheimer	Up from \$122	Outperform	\$114
Cowen	Down from \$121	Outperform	\$112
KeyBanc	Down from \$115	Overweight	\$110
Susquehanna	Down from \$109	Positive	\$108
Raymond James	Down from \$110	Outperform	\$100
Stifel	Upgrade to Buy, D/G price from \$108	Buy	\$98
Stephens	Down from \$108	Equalweight	\$93
Bofa/ML	Down from \$108	NA	\$84
Morningstar		Sell	\$66
William Blair		Outperform	\$
1) Upside based on \$60.33 share price. Source: Blod	omberg	Average Price Target (implied upside)	\$114 (+89%)

# SPRUCE POINT

# Case: 2:17-cv-00719-SDM-KAJ Doc.#: 251-2 Filed: 12/23/21 Page: 274 of 315, PAGEID #: 4749 OF POINT PUMPING XPO TO LESS SOPHISTICATED Retail Investors

CEO Jacobs touts his ability to do a \$7 - \$8 billion deal that's accretive to EPS, and claims technology is its "secret sauce". Fast forward a year, and XPO hasn't acquired anything.

In Spruce Point's opinion, XPO's secret sauce is stock promotion and accounting gimmickry to embellish results.



Source: Cramer Mad Money - Sept 2017

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 275 of 315 PAGEID #: 4750 Many Fundamental Headwinds Will Weigh On Forward Earnings Potential

XPO's inability to deliver a game-changing acquisition in 2018 despite repeated promotions by management and brokers leaves more negative headwinds than positive tailwinds to future financial results.

Concern	Spruce Point's Assessment
Revenues	<ul> <li>Waning pressures on the US transportation sector and increased capacity resulting in lower pricing and margins</li> <li>Synchronized slowing in global growth from trade wars and tariffs</li> </ul>
Operating Costs	<ul> <li>Labor: XPO depends on significant hourly labor and truckers to operate its business. A general shortage of experienced truckers and labor shortages in the US is pressuring wages. Additionally, XPO has experienced work stoppages and pressure from the Teamsters Union</li> <li>Worker safety: XPO is under investigation from the US Senate related to safety conditions for its workers.</li> <li>Bad Debts: Appear set to increase now that XPO is finally subtlety disclosing in Q3'18 the impact</li> <li>Pension: XPO has remarkably increased pension income every year, but with equity and fixed income returns falling precipitously around the world, return expectations should start to decline</li> </ul>
Currencies	<ul> <li>XPO has significant exposure to foreign currencies, notably the Euro and the Pound <ul> <li>12% of revenues from the UK</li> <li>26% from Rest of Europe (France 13%)</li> </ul> </li> <li>Brexit overhang is pressuring both of the currencies. GBP was +10% in 2017, now -6% in 2018; Euro was +15% ir 2017 and -5% in 2018</li> <li>XPO discloses a notional \$1.3bn cross-currency swap and the use of FX options</li> <li>We estimate XPO hedges just 26% hedge of total Euro and GBP exposure</li> </ul>
Interest Rates	<ul> <li>XPO's \$4.2 billion debt load (Weighted Avg Maturity: 6yrs) will eventually be refinanced at a higher interest rate</li> <li>It currently has a \$700m ABL (undrawn), \$1.5bn Term Loan, \$365m Euro A/R securitization facility, and \$52m assertinancing that are floating rate and will increase interest expense as rates rise</li> <li>We estimate 45% of XPO's debt outstanding is floating rate (it does not have any floating-to-fixed interest rate swaps as of 9/30/18)</li> </ul>



### XPO: A Collection of Acquired Junk

As we've <u>demonstrated</u>, XPO has extracted no value (as measured by excess cash flow) from 17 acquisitions, while its two recent large deals have saddled it with bad debts, higher pension liabilities, and moved it toward greater capital intensity businesses. We do not see how XPO can conceivably trade at a valuation higher than the sum of its acquired parts.

Ann Date	Acquisition	Enterprise Value	Revenues	EBITDA	EV / Revenues	EV/EBITDA
9/9/15	Con-way	\$3,016	\$5,744	\$510	0.5x	5.9x
4/8/15	Norbert Dentressangle	\$3,530	\$5,500	\$392	0.6x	9.1x
5/4/15	BTT	\$100	\$232	\$12.4	0.4x	8.1x
2/9/15	UX Logistics	\$59	\$113	\$8.2	0.5x	7.2x
7/29/14	New Breed	\$615	\$597	\$77	1.0x	8.0x
7/29/14	Atlantic Central	\$36.5	\$63	\$6.2	0.6x	5.9x
1/6/14	Pacer	\$279	\$980	\$22.4	0.3x	12.5x
12/11/13	NLM (1)	\$87	\$500	\$9.8	0.2x	8.9x
11/15/13	Optima Service	\$27	\$36	\$3.7	0.8x	7.3x
7/5/13	3PD	\$365	\$319		1.1x	
5/6/13	Interwide Logistics	\$4	\$28		0.1x	
2/26/13	Covered Logistics	\$11	\$27		0.4x	
2/12/13	East Coast Air	\$9	\$43		0.2x	
10/25/12	Turbo Logistics	\$50	\$124	\$6.9	0.4x	7.2x
10/1/12	BirdDog Logistics	\$1	\$7		0.1x	
8/3/12	Kelron Logistics	\$8	\$100	\$0.8	0.1x	10.0x
5/8/12	Continental Freight	\$4	\$22	\$0.9	0.2x	4.4x
Warning: The core of	(PO formed around tiny acquisitions	it paid virtually nothing for.		Wtd Average:	0.5x	7.4x



# Case: 2:17-cv-00719-SDM-KAJ Doc #; 251-2 Filed: 12/23/21 Page: 277 of 315 PAGEID #: 4752. Approximately 36% Overstatement

In our opinion, XPO's highly "adjusted" EPS is a combination of aggressive accounting, unsustainable pension gains, and poor practices that underpay workers and appear to cut corners on worker safety.

Line Item	XPO Consensus 2018E	Spruce Point 2018E Normalized	Comment
Operating Income (EBIT)	\$800.0	\$800.0	Consensus estimate
Less: Pension Income		(\$76.8)	Not a sustainable component of continuing earnings. XPO has clearly tried to accelerate gains from the past few years, and claimed these gains as "operating" to inflate EBITDA. Changes in market returns assumptions will drive these gains lower over time
Less: Incremental wage pressures		(\$37.5)	There is ample evidence from <u>union</u> , <u>Senate inquiries</u> and lawsuits that XPO is underspending on wages and safety while US wage pressures increase. We conservatively estimate \$625m of wages and salaries at a 6% increase to direct operating expenses
Less: Transaction, Integration, Restructuring & Rebranding costs		(\$26.7)	Recurring costs of XPO's stated acquisition strategy that it conveniently tries to have investors ignore
Less: Bad Debt Expense	-	(\$25.0)	It strongly appears that XPO has been delaying bad debt expenses, and just started mentioning it in Q3'18. In 2017, \$24m was charged to expense, but the real amount is likely 2x based on Norbert's historical accrual
Less: Amortization Expense		(\$23.2)	XPO has consistently extended amortization periods to lower amortization expense
Less: Incremental Interest Expense		(\$1.2)	Incremental interest expense from rising interest rates applied to Term Loan
Total Spruce Point Adjustments		(\$190.4)	Our adjustments deduced from the Street's \$635.8m pre-tax income
Pro Forma Pre-Tax Cont. Income	\$635.8	\$445.4	We estimate XPO's normalized pre-tax profit is approximately -30% lower
Less: Taxes	(\$192.4)	(\$134.8)	31% implied effective tax rate
Adjusted Net Income	\$443.4	\$310.6	
Diluted Shares	133.0	146.8	Analysts ignore the Series A Convertible Pfd. stock while XPO obscures the impact
Adj. Diluted EPS	\$3.33	\$2.12	We estimate continuing EPS approx36% below the street "adjusted" estimates



# Case: 2:17-cv-00719-SDM-KAJ Doc #; 251-2 Filed: 12/23/21 Page: 278 of 315 PAGEID #: 4753. Approximately 47% Overstatement

In our opinion, XPO's highly "adjusted" EPS is a combination of aggressive accounting, unsustainable pension gains, and poor practices that underpay workers and appear to cut corners on worker safety.

Line Item	XPO Consensus 2018E	Spruce Point 2018E Normalized	Comment
Operating Income (EBIT)	\$800.0	\$800.0	Consensus estimate
Less: Pension Income		(\$76.8)	Not a sustainable component of continuing earnings. XPO has clearly tried to accelerate gains from the past few years, and claimed these gains as "operating" to inflate EBITDA. Changes in market returns assumptions will drive these gains lower over time
Less: Incremental wage pressures		(\$37.5)	There is ample evidence from <u>union</u> , <u>Senate inquiries</u> and lawsuits that XPO is underspending on wages and safety while US wage pressures increase. We conservatively estimate \$625m of wages and salaries at a 6% increase to direct operating expenses
Less: Transaction, Integration, Restructuring & Rebranding costs		(\$26.7)	Recurring costs of XPO's stated acquisition strategy that it conveniently tries to have investors ignore
Less: Bad Debt Expense		(\$25.0)	It strongly appears that XPO has been delaying bad debt expenses, and just started mentioning it in Q3'18. In 2017, \$24m was charged to expense, but the real amount is likely 2x based on Norbert's historical accrual
Less: Amortization Expense		(\$23.2)	XPO has consistently extended amortization periods to lower amortization expense
Less: Incremental Interest Expense		(\$1.2)	Incremental interest expense from rising interest rates applied to Term Loan
Total Spruce Point Adjustments		(\$190.4)	Our adjustments deducted from the Street's \$635.8m pre-tax income
Pro Forma Pre-Tax Cont. Income	\$635.8	\$445.4	We estimate XPO's normalized pre-tax profit is approximately -30% lower
Less: Taxes	(\$192.4)	(\$134.8)	30% implied effective tax rate
Adjusted Net Income	\$443.4	\$258.6	We deduct \$52m for minority interest
Diluted Shares	133.0	146.8	Analysts ignore the Series A Convertible Pfd. stock while XPO obscures the impact
Adj. Diluted EPS	\$3.33	\$1.76	We estimate continuing EPS approx47% below the street "adjusted" estimates



## Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 279 of 315 PAGEID #: 4754 XPO Adj. EBITDA Per Share VS. Spruce Point Reality: Approximately 20% Overstatement

We believe XPO's Adj. EBITDA is overstated as a result of aggressive add-backs. Furthermore, we believe XPO's true leverage is much higher as are result of \$1.9 billion of operating leases that XPO could soon have to recognize on its balance sheet from ASU 2016-02 adoption on in 2019. XPO has been guiet on the topic, and has continually said it is "evaluating" the issue and that it would not early adopt the standard.

\$ in mm	XPO	Spruce Point Normalized	Comment
LTM Adj. EBITDA 9/30/18	\$1,493.9	\$1,493.9	Assuming XPO's "Adj EBITDA" at face value
Transaction/Integration Costs		(\$45.4)	Recurring cost, part of roll-up strategy
Rebranding Costs		(\$4.4)	Recurring cost, roll-up strategy
Gains From Asset Sales		???	XPO reclassified to operating in Q3'18; no details
Wage and Safety Costs		(\$37.5)	Underspending and many lawsuits outstanding
Bad Debt Expense		(\$25.0)	XPO has been under-reporting bad debts
XPO Europe/Noncontrolling Interest		(\$33.2)	Not available to XPO, XPO incorrectly claims 100%
Distributed/Undistributed Net Income		(\$34.2)	Not available to XPO, XPO incorrectly claims 100%
Spruce Point Adj. EBITDA	\$1,493.9	\$1,314.1	-12.0% lower
Diluted shares	132.3	146.8	Incremental 10.2m shares from Pfd. conversion
Spruce Point Adj. EBITDA per share	\$11.29	\$8.95	-20.7% lower
<b>Total Debt Outstanding</b>	\$4,234.7	\$4,234.7	
Plus: Operating Leases		\$1,978.6	Likely on balance sheet Jan 1, 2019
Less: Cash and Equivalents	(\$427.9)	(\$427.9)	
Pro Forma Net Adjusted Debt	\$3,806.8	\$5,785.4	
EBITDAR		\$2,067.9	\$716m of rent exp. disclosed FY17
Net Debt / Adj. EBITDA(R)	2.5x	2.8x	



### Valuation of Public Comparables

XPO Logistics has morphed from a traditional third party (asset light) logistics provider into an integrated provider of transportation and logistics services (capital intensive). As a result, we believe it should receive a lower multiple more closer to larger integrated peers such as UPS and Fedex, albeit at a valuation discount to reflect its suspect accounting and low quality management and Board, with demonstrated associations to convicted felons and a Ponzi scheme. (1) We believe 2019E estimates are too high, and XPO will fail to deliver a material acquisition as it struggles with fundamental headwinds.

		Stock		'18E-	'19E				Enterpr	ise Valu	е		Net	
		Price	Ent.	Sales	EPS	P/	<u>E</u>	EBIT	DA	Sa	ales	Price/	Debt/	Dividend
	Name (Ticker)	12/12/2018	Value	Growth	Growth	2018E	2019E	2018E	2019E	2018E	2019E	Book	18E EBITDA	Yield
	Logistics													
	C.H. Robinson (CHRW)	\$88.58	\$13,224	5.4%	8.8%	19.3x	17.8x	13.4x	12.4x	0.8x	0.7x	NM	1.1x	2.3%
	Forward Air (FWRD)	\$69.34	\$1,736	7.3%	13.3%	23.0x	20.3x	11.1x	10.3x	1.3x	1.2x	3.8x	0.1x	1.2%
	HUB Group (HUBG)	\$40.19	\$1,422	-1.8%	14.6%	14.4x	12.5x	7.3x	6.2x	0.3x	0.4x	1.4x	1.4x	0.0%
	Echo Global (ECHO)	\$21.93	\$782	6.3%	3.6%	12.3x	11.9x	8.3x	7.9x	0.3x	0.3x	0.8x	2.0x	0.0%
			Max	7.3%	14.6%	23.0x	20.3x	13.4x	12.4x	1.3x	1.2x	3.8x	2.0x	2.3%
Shaded			Average	4.3%	10.1%	17.2x	15.6x	10.0x	9.2x	0.7x	0.7x	2.0x	1.1x	0.9%
companies	Integrated		Min	-1.8%	3.6%	12.3x	11.9x	7.3x	6.2x	0.3x	0.3x	0.8x	0.1x	0.0%
specifically	United Parcel (UPS)	\$101.70	\$105,875	6.0%	7.9%	14.1x	13.0x	10.9x	9.9x	1.5x	1.4x	NM	1.9x	3.6%
mentioned as	Fedex Corp (FDX)	\$188.76	\$64,316	5.5%	15.0%	10.8x	9.4x	7.0x	6.2x	0.9x	0.9x	2.6x	1.4x	1.4%
best peers for	J.B. Hunt Corp (JBHT)	\$98.68	\$11,835	11.4%	18.4%	18.2x	15.4x	9.4x	8.2x	1.4x	1.2x	5.3x	0.8x	1.0%
XPO's large	Knight Swift (KNX)	\$28.66	\$5,885	5.9%	14.4%	12.1x	10.6x	6.1x	5.5x	1.1x	1.0x	0.6x	0.9x	0.0%
acquisitions of	Schneider (SNDR)	\$20.30	\$3,610	7.5%	14.5%	13.3x	11.7x	5.4x	4.8x	0.7x	0.7x	1.7x	0.0x	0.0%
Pacer Int'l and			Max	11.4%	18.4%	18.2x	15.4x	10.9x	9.9x	1.5x	1.4x	5.3x	1.9x	3.6%
Con-Way (2)			Average	7.3%	14.0%	13.7x	12.0x	7.8x	6.9x	1.1x	1.0x	2.5x	1.0x	1.2%
	Truckers		Min	5.5%	7.9%	10.8x	9.4x	5.4x	4.8x	0.7x	0.7x	0.6x	0.0x	0.0%
	Old Dominion (ODFL)	\$130.85	\$10,565	8.2%	9.2%	18.2x	16.7x	10.4x	9.5x	2.6x	2.4x	4.1x	-0.1x	0.4%
	SAIA, Inc (SAIA)	\$55.36	\$1,543	8.2%	16.7%	14.2x	12.2x	6.4x	5.6x	0.9x	0.9x	2.2x	0.5x	0.0%
	ArcBest (ARCB)	\$36.53	\$976	5.5%	2.1%	9.6x	9.4x	4.1x	3.9x	0.3x	0.3x	1.4x	0.2x	0.9%
	YRC Worldwide (YRCW)	\$4.61	\$851	3.3%	NM	12.5x	5.0x	2.9x	2.8x	0.2x	0.2x	NM	2.3x	0.0%
	Covenant Transport (CVTI)	\$20.27	\$588	14.4%	19.7%	9.1x	7.6x	4.3x	3.8x	0.7x	0.6x	1.1x	1.6x	0.0%
			Max	14.4%	19.7%	18.2x	16.7x	10.4x	9.5x	2.6x	2.4x	4.1x	2.3x	0.9%
			Average	7.9%	11.9%	12.7x	10.2x	5.6x	5.1x	0.9x	0.9x	2.2x	0.9x	0.3%
			Min	3.3%	2.1%	9.1x	5.0x	2.9x	2.8x	0.2x	0.2x	1.1x	-0.1x	0.0%
	XPO (Street)	\$60.33	\$12,496	7.2%	28.0%	18.1x	14.1x	7.9x	6.9x	0.7x	0.7x	1.8x	2.4x	0.0%
	Spruce Pt. Adjusted		\$17,245			28.5x		9.5x						
	Share and the same								100000000		1200000	000000000000000000000000000000000000000	Contract of the Contract of th	

Highest industry earnings growth rate at risk of material disappointment absent acquisition

<sup>1)</sup> Stock promoters such as JP Morgan claim XPO should trade at a premium, "We use modestly above-peer multiples of 12.5x and 7.6x for each of XPO's respective parts in recognition of organic growth opportunities in a diverse number of large markets bolstered by high-quality management" Nov 1, 2018

<sup>2)</sup> Pacer and Con-Way Fairness Opinions. In addition, XPO's proxy statement benchmarks itself against UPS, Fedex, CH Robinson, and Swift



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 281 of 315 PAGEID #: 4756 Spruce Point Estimates 40% — 60% Intermediate Downside Risk, 100% Long-Term Downside

A crisis of confidence in management and a loss of access to capital could wipe out XPO shareholders. In the interim, we see 40% to 60% downside risk as the market reassess XPO's earnings and management quality.

\$ in millions, except per share amounts

Valuation	Low Multiple	High Multiple	Note					
Common Sense	<ol> <li>Six Simple Reasons XPO Is Uninvestible And A Potential Zero</li> <li>XPO's CEO has associated with felons that perpetuated a fraud at United Rentals / Terex</li> <li>Its Audit committee member has hidden his involvement in a \$700m Ponzi scheme</li> <li>There are striking similarities in the accounting playbook between United Rentals and XPO</li> <li>XPO has generated virtually no free cash flow since inception and is resorting to bank overdrafts, factor receivables, and increased asset sales to bridge its capital needs</li> <li>XPO is now burdened with \$4.2bn of debt, and entirely dependent on external capital for growth. With interest rates and overall cost of capital increasing, will banks gleefully fund XPO's grand ambition</li> <li>US Senators and Teamsters already distrust XPO. How will they respond after reviewing our report?</li> </ol>							
P/E Multiple Spruce Point Adj. 18E EPS Price Target % Downside (1)	13.0x \$1.76 \$22.90 -62%	16.0x \$1.76 \$28.20 -53%	We use our normalized estimate for earnings from continuing operations.					
EV Multiple LTM 2018 EBITDA Enterprise Value Less: Minority Interest (2) Less: Debt At Book Value Plus: Cash and Equiv. Dil. Shares Price Target % Downside (1)	6.0x \$1,314 \$7,885 (\$511) (\$4,235) \$428 146.8 \$24.30sh -60%	7.5x \$1,314 \$9,856 (\$511) (\$4,235) \$428 146.8 \$37.73/sh -38%	XPO trades at approximately 8.7x our Adjusted EBITDA – a premium to the average multiple paid for its seventeen acquisitions of ~7.5x (a majority at peak cycle values). XPO should not trade above the sum of its parts given our belief it has not created any tangible value. ~70% of XPO's EBITDA contribution from Transportation with ~30% from Logistics. This mix is how we derive our reference multiple range					

- Downside based on \$60.33/share
- Based on 13.75% of XPO Europe's market value



Appendix: XPO's Technology Hype



# Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed; 12/23/21 Page: 283 of 315 PAGEID #: 4758 POINT COMPETITOR TOUTS THEIR SECRETIVE "Proprietary" Technology

### A XPO is just another logistics company touting its great "proprietary" technology in an attempt to bolster its valuation.

Company	Technology Claim	Source
XPO Logistics	Our <u>proprietary</u> , cloud-based technology gives us the agility to respond to customer needs, and is a major reason why customers trust us each day with 160,000 ground shipments and more than seven billion inventory units	<u>Website</u>
CH Robinson	C.H. Robinson's <u>Proprietary</u> Single Global Technology Platform: Navisphere technology platform gives you end to end shipment visibility and connects you with all your customers and service providers—anywhere in the world where you do business—so you can manage spend, manage risk and improve efficiency	<u>Website</u>
Total Quality Logistics	TQL TRAX is a free web portal and mobile app that gives you visibility and flexibility on every truckload and LTL shipment. Accessible through TQL.com or through a free, downloadable app, TQL TRAX integrates with our <b>proprietary</b> load management software in real-time, giving you the most recent information available about your shipment wherever you want it, 24/7/365.	<u>Website</u>
Hub Group	Our <u>proprietary</u> intermodal systems allow us to provide the most efficiency, security and transparency when executing your orders.	Website
UPS/Coyote	Coyote uses a suite of <u>proprietary</u> information technologies that provides market-leading transportation management applications	Website
Expeditors	These digital services are powered through the Company's <b>proprietary</b> , cloud based operating system which enables unsurpassed visibility and control across air, ocean and ground transportation providers	<u>Website</u>
Transplace	We employ industry-leading and <u>proprietary</u> technology solutions to improve operational execution and visibility.	Website
Echo Global Logistics	With integrated portals and customized applications, our <u>proprietary</u> technology delivers real-time connectivity across the supply chain.  Maximize your transportation spend with easy-to-use, scalable tools.	<u>Website</u>

# Case: 2:17-cv-00719-SDM-KAJ, Doc #: 251-2 Filed: 12/23/21 Page: 284 of 315 PAGEID #: 4759 BY No Patent Protections

Despite having zero patents, there are signs of XPO embellishing its technology prowess with buzz words and greater use of the word "technology" in its SEC filings. Despite this, XPO can't get its IT professional count straight.

Year End	SEC 10-K Word Count "Technology"	IT Professionals	Annual Spend \$mm	Adding Tech Hype Buzzwords	Patents mentioned in the 10-K
2018				XPO Logistics Adds Augmented Reality to the Last Mile Experience	0
<u>2017</u>	77	1,700	\$450	"Automation and robotics; big data"  "We have built a highly scalable and integrated system on a cloudbased platform"  "We have developed predictive analytics that use machine learning to forecast demand"	0
<u>2016</u>	49	1,600	\$425		0
<u>2015</u>	52	1,500 or 1,000? (1)	\$400+ ( <u>Feb 16</u> <u>Presentation)</u> \$225m (PF <u>ND</u> <u>acquisition</u> )		0
<u>2014</u>	64	600	\$70 (May 2014)		0
<u>2013</u>	44				0
<u>2012</u>	27				0

<sup>1)</sup> XPO's 10-K filed Feb 29, 2016 said 1,600 but on Feb 24th just five days earlier at an investor presentation it said 1,000 professionals

### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 285 of 315 PAGEID #: 4760 RODOTICS NEWS TO FEED THE XPO STOCK **Promotion Machine?**

XPO is trying very hard to position itself more like a technology company, when in reality it is just a trucking company and a logistics provider. It recently issued a press release that it would deploy 5,000 collaborative warehouse robots in North America. XPO was successful in generating lots of headlines with "news" associating itself with robotics.... mission accomplished!



**XPO** Logistics doubles down on **robots** in warehouses

Axios - Oct 3, 2018

XPO Logistics says these robots will reduce an employee's walking time in the warehouse and eliminate heavy lifting. Photo: XPO Logistics.

XPO to deploy 5000 GreyOrange robots for e-commerce fulfillment DC Velocity - Oct 3, 2018

XPO to deploy 5000 robots in its warehouses

Air Cargo News - Oct 3, 2018

XPO's largest robotic deployment to date will bring 5000 units to its ...

FreightWaves - Oct 3, 2018

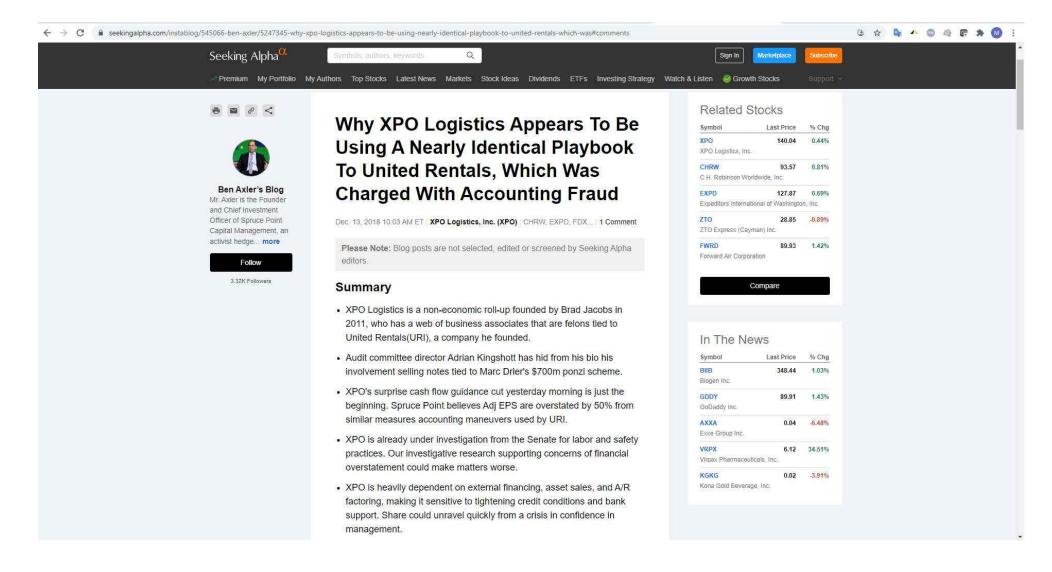
XPO Logistics to Deploy 5000 Collaborative Warehouse Robots in ...

PostBulletin.com - Oct 3, 2018

From Reindeer to Robots, Automation Set to Deliver This Holiday ...

In-Depth - Wall Street Journal - Oct 3, 2018

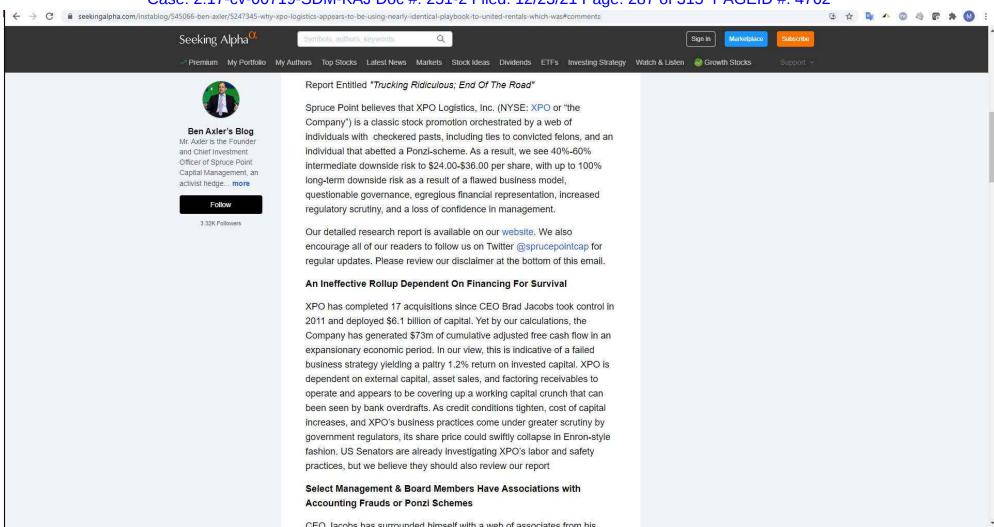
Source: Google and XPO

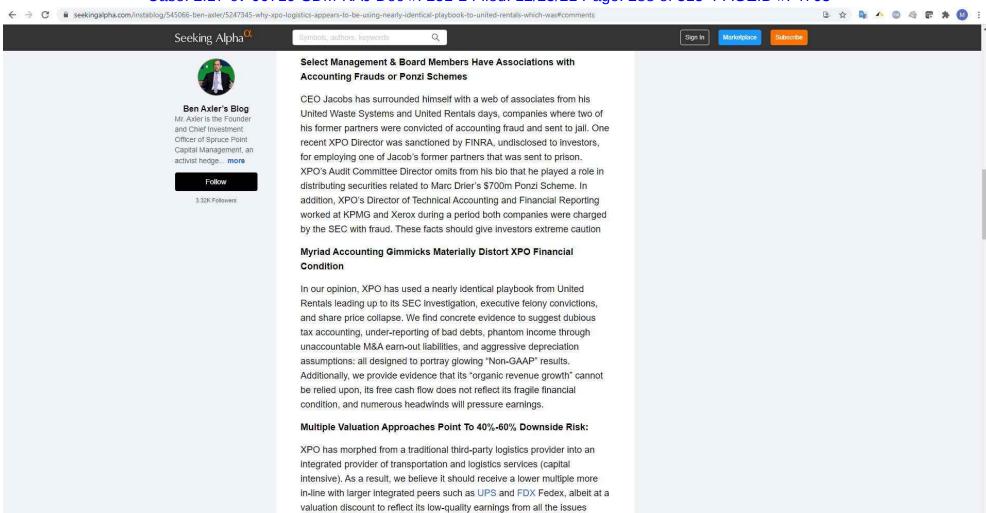


David Jacoby

Exhibit 16

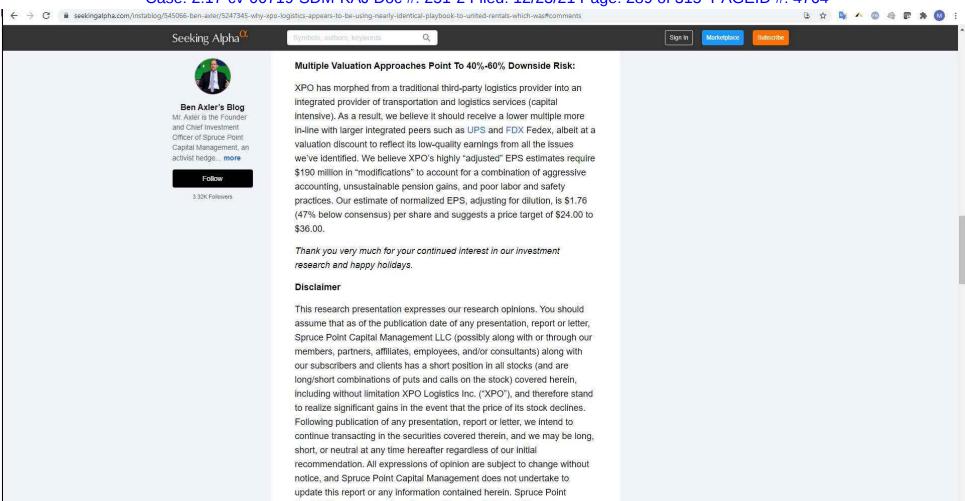
### Case: 2:17-cv-00719-SDM-KAJ Doc #: 251-2 Filed: 12/23/21 Page: 287 of 315 PAGEID #: 4762





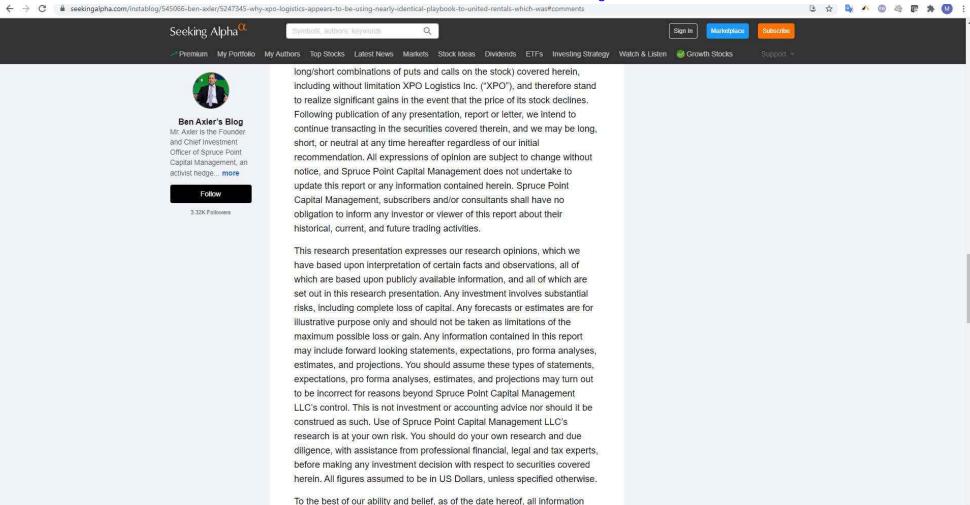
we've identified. We believe XPO's highly "adjusted" FPS estimates require

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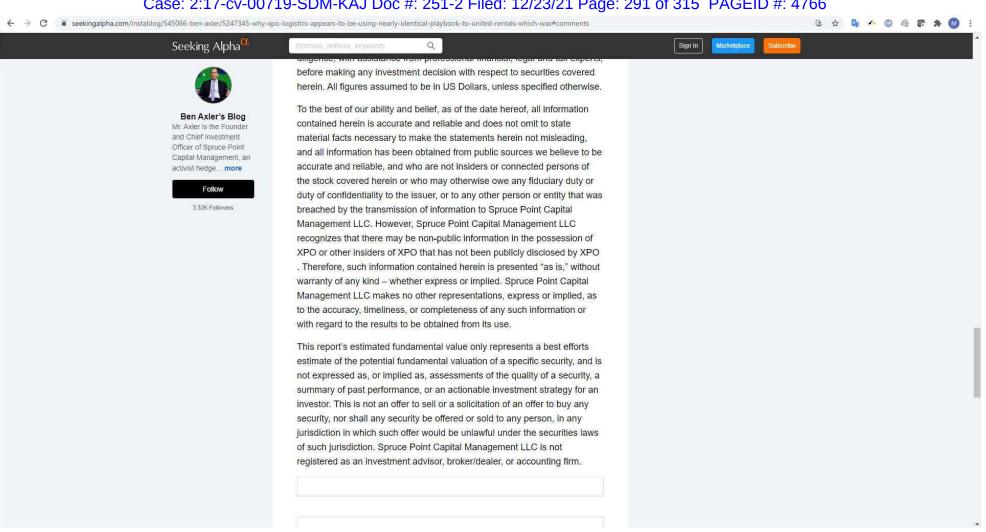


Capital Management, subscribers and/or consultants shall have no

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David Jacoby

Exhibit 17

#### WAREHOUSE RECEIPT (NON-NEGOTIABLE)

Receipt No. 310056

XPO Logistics, Inc. 4513 Oates Road Houston, TX 77013 (832) 239-5807 www.xpogloballogistics.com

This Non-Negotiable Warehouse Receipt is to certify that XPO Global Logistics, Inc, referred to as Warehouseman, has received in storage for the account of Great Southland Limited of Singapore the following items:

GOODS	TYPE	SIZE	WEIGHT	STORAGE RATE	HANDLING RATE
24-TIRES	GOODYEAR	46/90R57			
12-TIRES	GOODYEAR	59/80R63			

Delivery will be made to the person designated upon order of Great Southland Limited. The terms of this Receipt governs the relationship between the parties to the sale of the above listed items and XPO Global Logistics and supersede any terms on any other bill of lading, delivery order, or warehouse receipt.

By:

XPO Global Logistics, Inc.

Date:

. 2016



#### UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

GREAT SOUTHLAND LIMITED,

Plaintiffs, Case No. 2:17-cv-00719

v. Judge Sarah D. Morrison

LANDASH CORPORATION, et al, Magistrate Judge Kimberly A. Jolson

Defendants.

#### **EXHIBIT 14**

to

# FIRST AMENDED COMPLAINT (JURY DEMAND ENDORSED HEREON)

### **EXHIBIT 14**

## **XPO LOGISTICS**

4513 Oates Rd. Houston TX 77013 Ph. (713) 504-6062 <u>Date</u> 3/7/16

#### Inspection

Customer Landash Corporation 885 Sternberger Road Jackson OH 45640

Location

Tire size	Brand	Model	Tread	Serial # Co	andition
46/90R57	Goodyear	RM-4A	E-4	V/0214MJ0244	New MR2015-399 C
46/90R57	Goodyear	RM-4A	E-4	√0114MJ0615	New MR2015-3996
46/90R57	Goodyear	RM-4A	E-4	V 0913MJ0684	New MR2015-399B
46/90R57	Goodyear	RM-4A	E-4	/0514MJ2456 ~	New MP 2015-3996
46/90R57	Goodyear	RM-4A	E-4	0514MJ2459	New MR2015-3991B
46/90R57	Goodyear	RM-4A	E-4	V 0514MJ2482 -	New MR 2015-399B
46/90R57	Goodyear	RM-4A	E-4	✓0514MJ2406 ✓	Now MA 2015-3991
46/90R57	Goodyear	RM-4A	E-4	0514MJ2487	New MR 2015-3996
46/90R57	Goodyear	RM-4A	E-4	V0114MJ0591	New MR2015-39915
46/90R57	Goodyear	RM-4A	E-4	/1213MJ0093	New MR 2015-399A
46/90R57	Goodyear	RM-4A	E-4	0514MJ2438	New MR 2015-399
46/90R57	Goodyear	RM-4A	E-4	V0214MJ0288	New MR 2015-399A
46/90R57	Goodyear	RM-4A	E-4	0514MJ2495	New MR 2015411B
46/90R57	Goodyear	RM-4A	E-4	✓0214MJ0279 ✓	New MR-2015-411A
46/90R57	Goodyear	RM-4A	E-4	√1213MJ0078 ✓	New MR 2015-411D
46/90R57	Goodyear	RM-4A	E-4	√1114MJP342 ✓	New MR2015-411C
46/90R57	Goodyear	RM-4A	E-4	/1114MJP326 -	New MR2015-411B
46/90R57	Goodyear	RM-4A	E-4	✓1114MJP337 —	New MR2015-411B
46/90R57	Goodyear	RM-4A	E-4	1114MJP494 ~	New MR2015-411C
46/90R57	Goodyear	RM-4A	E-4	✓1114MJP336 ✓	New MR 2015411C
46/90R57	Goodyear	RM-4A	E-4	1114MJP346	New MR 2015-411B
46/90R57	Goodyear	RM-4A	E-4	/1114MJP347 /	New MR 2015-411B
46/90R57	Goodyear	RM-4A	E-4	/114MJP338 /	New MR2015-411C
46/90R57	Goodyear	RM-4A	E-4	1114MJP306 ~	New MR 2015-411C

### **XPO LOGISTICS**

4513 Oates Rd. Houston TX 77013 Ph. (713) 504-6062 <u>Date</u> 3/7/16

#### Inspection

Customer Location

Landash Corporation 885 Sternberger Road Jackson OH 45640

Tire size	Brand #	Model /	Tread	Serial# Cor	ndition
59/80R63	Goodyear	RM-4A	E-4	V 0914MJP552	New MR2015-399C
59/80R63	Goodyear	RM-4A	E-4	√0814MJP542	New MR 2015-399C
59/80R63	Goodyear	RM-4A	E-4	0814MJP511	New MR 2015-399C
59/80R63	Goodyear	RM-4A	E-4	V0814MJP532	New MR2015-399D
59/80R63	Goodyear	RM-4A	E-4	√0914MJP575 ✓	New MR2015-3991
59/80R63	Goodyear	RM-4A	E-4	0914MJP5601	New mn 2015-399 D
59/80R63	Goodyear	RM-4A	E-4	V0914MJP564	New ma 2015-411
59/80R63	Goodyear	RM-4A	E-4	1014MJP405	New Ma 2015-411
59/80R63	Goodyear	RM-4A	E-4	0814MJP534	New mR 2015-41119
59/80R63	Goodyear	RM-4A	E-4	V0814MJP538	New MR2015-411A
59/80R63	Goodyear	RM-4A	E-4	V0814MJP544 ✓	New MR2015-411A
59/80R63	Goodyear	RM-4A	E-4	V0914MJP566	New MR2015-411D



David Jacoby

Exhibit 19

# Guide to Loss and Damage Claims



Thank you for choosing FedEx! We appreciate the opportunity to serve you and look forward to meeting your shipping needs.

Whether this information is being provided to you as a courtesy, or per your request; please note that the information contained herein applies only to FedEx Freight. This information is general in nature. If a specific question is not answered here, or for additional information, please contact our Cargo Claims department at 1.800.308.3963. If a provision herein conflicts with any applicable tariff, terms and conditions, and/or regulation, the applicable tariff, terms and conditions, and/or regulation controls.

#### Shipper's Responsibilities

To prevent loss and damage during normal transportation handling, the shipper has the following responsibilities:

- Proper packaging.
- Proper markings on the packaging.
- Proper description on the shipping papers.

All existing tariff rules (including FXF 100 Series Rules Tariff, if applicable) and shipping regulations related to your product must be followed. Minimum packaging requirements are outlined in the following two publications:

- National Motor Freight Classification
- Hazardous Materials Regulations of the Department of Transportation

#### **Recipient's Responsibilities**

As the recipient, you must carefully identify and document loss and/or damage on the delivery receipt at time of delivery.

There are two types of loss or damage:

- Visible or noted loss or damage.
- Concealed loss or damage.

#### **Visible or Noted Loss or Damage**

Visible loss or damage is apparent at the time of delivery and should be noted. Noted loss or damage is recorded in detail on the delivery receipt.

When recording loss or damage, please use specific details and try to avoid general or generic terms such as "box damaged" or "torn". This type of notation does not provide adequate support for your claim.

Please note: A notation of "subject to inspection," by itself, is not considered a valid notation of loss or damage.

Example of Proper Notation: "2 of 12 bottles #12345 hand soap damaged in 1 carton"

#### **Concealed Loss or Damage**

These claims are considered and investigated as concealed loss or damage claims and will be handled based on their individual merits.

Concealed loss or damage is that which was not apparent at the time of delivery. The National Motor Freight Classification, ITEM 300135 (see specific section below) states: "When damage to contents of a shipping container is discovered by the recipient which could not have been determined at time of delivery, it must be reported by the recipient to the delivering carrier upon discovery and a request for inspection by the carrier's representative made. Notice of loss or damage and a request for inspection may be given by telephone or in person, but in either event must be confirmed in writing by mail."

Concealed damage must be reported to the carrier within 21 days of delivery. Inspection or waiver of inspection will be provided by FedEx Freight as promptly as possible and practicable after receipt of request by the recipient. However, should we waive inspection, the recipient must make the inspection and record all information to the best of his or her ability pertinent to the cause.

#### **Shortages**

If possible, make a written tally record when a large number of items are being received or the shipment consists of a number of different items. At time of delivery please check the labels on all handling units to be certain they are yours and check for shortages as goods are being unloaded. Be sure to keep the shipment together until unloading is complete, in case a recount is necessary.

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If there is a shortage, please note it on the delivery receipt before signing for the shipment.

#### Stretchwrapped and Shrinkwrapped Skids

Carrier is responsible for handling units, as counted at the time the shipment is received. Therefore, if a driver signs for a shipment as "1 SWS (stretchwrapped skid) STC (said to contain) 25" or "1 SWS UTC (unable to count)," FedEx Freight is responsible for delivering 1 stretchwrapped skid intact, not 25 pieces. If cartons or pieces are counted at delivery and a shortage is reported, the carrier is only responsible if the stretchwrap has been broken (check-box on the delivery receipt should note the condition of the stretchwrap as intact or not).

If the same driver accepts "1 SWS 25 Cartons" or "25 on 1 SWS," our responsibility is for the quantity of cartons, as the driver has indicated the pieces were counted (by noting pieces and omitting the unable to count, said to contain, or similar notation).

#### **Item or Purchase Order Numbers**

Carrier is not responsible for item or purchase order numbers, only piece count. This is because item and/or purchase order numbers are not verified at the time of pickup. (Example: If delivery receipt is noted "20 cartons item 123456 over, 20 cartons 654321 short," no carrier responsibility exists.)

#### **Claim Filing**

Per the Bill of Lading Terms and Conditions, claimants have nine (9) months from the date of delivery (or from the date delivery could have reasonably been expected) to file claims for loss and/or damage. If any part of a shipment is refused due to damage, the nine (9) months begins when the shipment was originally tendered for delivery. A claim is not considered to have been filed until it is received by the carrier.

For intra-Canada shipments, notice of a claim for loss or damage must be submitted to the originating or delivering carrier in writing within sixty (60) days of the delivery date. In the event of failure to make delivery, notice must be received within nine months of the date of shipment.

All claims are handled in accordance with the NMFC Principles and Practices for the Investigation and Disposition of Freight Claims, the Bill of Lading Terms and Conditions, and applicable Rules Tariff or Contract (see specific sections below).

You have several options for filing loss or damage claims:

- Registered users of FedEx Freight My Account may file claims online and scan or attach documents electronically (documentation supporting
  the claim may also be faxed or mailed to the number or address referenced below).
- You may request blank claim forms from any of our offices. Upon completion the forms may be sent:
  - » Via Fax to 1.877.229.4766.
  - » Via Mail to FedEx; Cargo Claim Dept.;, P.O. Box 256, Pittsburgh, PA 15230.
  - » Via email to file.claim@fedex.com.

#### All claims should include:

- The freight bill number.
- Explanation of loss and/or damage.
- Dollar amount being claimed.
- Claimant's contact information (name, address, telephone, fax and email).
- A copy of the original vendor invoice this is the original invoice issued to the consignee or third party for the merchandise shipped.

Other information may be necessary, including (but not limited to):

- An explanation of why merchandise cannot be repaired or retained with an allowance as well as a contact name and telephone number to arrange salvage pickup of merchandise claimed as a total loss.
- A breakdown of the labor (number of hours, cost per hour) and itemized detail of the claimant's cost of parts if merchandise has been repaired. (See important information under the Mitigation or Repair section.)
- Weight of the merchandise claimed if it is released value freight, or subject to maximum liability limitations.
- For partial or complete shortages:
  - » A charge back issued by the recipient.
  - » A credit memo from the shipper.

Providing this information when a claim is filed will greatly reduce the administrative costs for both the claimant and the carrier. Also, complete claims are more likely to be finalized in a timely manner, increasing customer satisfaction.

If merchandise is being claimed as a total loss, it must be retained as salvage until payment is made, or the carrier advises otherwise. If the claimant is unable to retain salvage indefinitely, National Motor Freight Classification (NMFC) ITEM 300150 outlines the proper means of notifying the carrier. Failure to retain salvage or properly notify the carrier may result in amendment or declination of the claim.

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#### **Liability - Bill of Lading, Rules Tariff, and Contract Information**

Claims are handled in accordance with the Bill of Lading Terms and Conditions, customer-specific contracts or pricing agreements, and/or FXF 100 Series Rules Tariff, in effect at the time of the shipment.

The Bill of Lading serves as the contract of carriage, receipt of goods by the carrier, and in some cases as the title of rightful ownership. Some important items to consider from the Bill of Lading Terms and Conditions\* are:

- Section 1(b) Carriers are not liable for loss or damage caused by:
  - » Act of God (i.e., tornado, flood, earthquake, etc).
  - » Public enemy.
  - » Authority of law.
  - » Act or default of shipper (i.e., improper packaging, improper labeling).
  - » Defect or inherent vice of the commodity.
- **Section 3(b)** Claimants have nine (9) months from the date of delivery (or from the date delivery could have reasonably been expected) to file claims for loss and/or damage.
- **Section 9** If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the terms and provisions and limitations of liability specified by the "Carriage of Goods By Sea Act" and any other pertinent laws applicable to water carriers.

The FXF 100 Series Rules Tariff contains all pertinent information to doing business with FedEx Freight, including rules and accessorial rates. Important items from the FXF 100 Series Rules Tariff include (please review specific items for complete details):

- **Item 220** releases the carrier from liability for any direct, indirect or consequential damages which result from a delay in delivery.
- **Item 420** outlines carrier liability
  - » Maximum of \$25.00 per pound per package or \$100,000.00 per incident for new freight not released to a lower value, unless excess liability coverage (additional charges apply) is requested.
  - » Used merchandise is released to a value not exceeding \$0.50 per pound, unless the merchandise is described as used and excess liability coverage (additional charges apply) is requested.
  - When freight is shipped under Freight All Kinds (FAK) pricing governed by the provisions of this tariff for merchandise with available declared or released value provisions in the NMFC, liability is limited to the lowest declared or released value provided in the NMFC.
  - » The weight of packaging and/or shipping containers, pallets, skids, etc, are not included when determining EXCESS LIABILITY COVERAGE or carrier's maximum liability.
  - » Intra-Canada shipments are subject to a maximum liability of \$2.00 (CAD) per pound unless a higher value has been declared (additional charges apply) on the face of the Bill of Lading at time of shipment.
  - » For shipments involving movement by an ocean vessel in which damage or loss occurs during the loading, handling, stowage, or discharge from the ocean vessel, liability is limited to \$500 per package or, if lower, the limitation of liability specified in the most recent version of the "Carriage of Goods by Sea Act."
  - » For shipments moving to or from points in Mexico in which damage or loss occurs while within the border of Mexico, or at a Border Gateway of Mexico, maximum liability will be limited to \$0.50 per pound per package or \$5,000.00 per incident, whichever is less.
- **Item 421** Carrier Liability Limited (Applicable only when reference is made to this item)
  - 1. When reference is made to this item, Carrier's liability will not exceed the maximum liability per pound for classes provided below.
  - 2. Claims will be based on a per-item or article basis; liability will not be determined on the weight of the entire shipment nor the entire weight of the commodity in question.
  - 3. Carrier's liability will be the same as that of the FAK class, Exception class or class reduction. For example, an actual class 125 reduced to an FAK or Exception class 70 will be subject to the Maximum Value per pound per package for class 70.
  - 4. Carrier's liability for loss or damage to any article(s) or part thereof for which the charges are determined by FAK (Freight of All Kinds) class or Exception class is limited to the (1) actual cost of the goods lost, damaged or destroyed; (2) exclusions or limited liability provisions of the Bill of lading; (3) applicable limited liability provisions of the NMFC; or (4) lowest Released Value shown in the NMFC for the commodity shipped, or \$100,000 per incident per Shipper, whichever is less, subject to the maximums by FAK and/or exception class as shown below.
  - 5. In lieu of maximum liability as indicated in the above table, USED or RECONDITIONED items will be subject to a maximum liability of \$0.50 per pound per package or \$10,000.00 per incident, whichever is lower, regardless of the published FAK (Freight of All Kinds) class or Exception class.
  - 6. There is no excess liability coverage available for published FAK (Freight of All Kinds) class or Exception class pricing referring to this item.

NOTE 1: All liability per pound per package will be subject to a maximum Carrier liability of \$100,000 per incident per Shipper.

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<sup>\*</sup>Shipments moving from points in Canada or Mexico move under the Terms and Conditions of the specific Canada or Mexico Bill of Lading.

CLASS	MAXIMUM LIABILITY PER POUND PER PACKAGE	CLASS	MAXIMUM LIABILITY PER POUND PER PACKAGE
50	\$ 1.00	110	\$ 25.00
55	2.00	125	25.00
60	3.00	150	25.00
65	5.00	175	25.00
70	7.50	200	25.00
77.5	10.00	250	25.00
85	15.00	300	25.00
92.5	17.50	400	25.00
100	25.00	500	25.00

- **Item 578** outlines Shipper Load and Recipient Unload provisions
  - » If a shipment is received as "SLC" (shipper's load and count).
    - The shipment is to be counted, loaded and properly blocked and braced for transit by the shipper.
    - In the event of shortage or damage noted at first break, the carrier will not be liable if the exception is reported to the shipper within 24 hours.
    - If the exception is not noted at first break and properly reported, the carrier agrees to accept liability for the shipment as if it were a
      "live load."
  - » If a shipment is spotted at a recipient location for unloading.
    - The shipment is to be unloaded and counted by the recipient.
    - In the event of shortage or damage, the recipient will not be liable if the exception is reported to the carrier within 24 hours.
    - If the exception is not properly reported, the recipient agrees to accept liability for the shipment as a clear delivery.
- Item 960 incorporates Bill of Lading section 3(b) into our Rules tariff (reference above).

#### **Requesting Additional Liability Coverage**

FXF 100 Series Rules Tariff Item 420 also outlines the steps to be taken if a customer wishes to request additional liability coverage. In any case, carrier liability is limited to the **lesser** of destination value, or the applicable released value or limited liability.

- Shipments of used items may be covered up to \$5.00 per pound per package or \$10,000.00 per incident (additional charges apply). This coverage must be specifically requested on the original Bill of Lading by describing the articles as used and noting, "Excess liability coverage requested: \$5.00 per pound."
- Shipments of new items may be covered up to \$50.00 per pound per package or \$100,000.00 per incident (additional charges apply). This coverage must be specifically requested on the original Bill of Lading by noting, "Excess liability coverage requested: (amount of excess coverage)."
- **Shipments moving to or from Mexico** may be covered up to \$50,000 when the weight of the shipment exceeds 10,000 pounds (additional charges apply). All other additional liability coverage is expressly disallowed on shipments to points outside of the U.S., its possessions, or to points in Canada.

#### **Freight Charge Recoverability**

In most cases, FedEx Freight does not move replacement freight free astray. However, you may include original or replacement freight charges as part of your claim (recoverability will be determined through investigation).

If only a portion of the shipment is lost or damaged, any recoverable freight charges will be prorated to reflect only the lost or damaged portion. If no freight charges are recoverable, but a greater freight cost is incurred to ship a replacement, the claimant may be entitled to recover the difference between the replacement freight charge and the prorated original.

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#### **Special Damages**

Special damages are those which are a result of a breach in the contract of carriage, but are not ordinarily foreseeable at the time of pickup. In order to be held liable for special damages, carriers must be given notice of the special circumstance and the consequences before or at the time of pickup. Special damages may include:

- Expedited labor (for repair) or freight charges.
- Operational shutdowns.
- Travel expenses.
- Lost use or rental of equipment.
- Lost sale due to delay.

Generally speaking, carrier liability is limited to the actual cost of goods at destination and any amount beyond this amount would not be considered recoverable.

#### **Mitigation or Repair**

Claimants have a legal obligation to mitigate claims and reduce the damages as much as possible. This can be accomplished through:

- Repair Claims for repair should reflect the claimant's cost for parts and labor.
- Sorting damaged and undamaged pieces to reduce the quantity being claimed (see labor rate in the section titled Claim Filing).
- Cutting sheet, roll and wire goods to salvage and reuse as much material as is possible.
- Sale through the most profitable means available. (Claim would then reflect the difference between the destination value and the amount recovered through the secondary sale.)
- Retaining damaged but useable goods for an allowance.
- Any other means resulting in a reduction in the claim equal to or greater than that which the carrier may have obtained through salvage of the goods.

ITEM	PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND DISPOSITION OF FREIGHT CLAIMS		
	(Provisions named herein are NOT applicable on interstate or foreign commerce for account of carriers referenced with (except SEAU or TOTE) shown in the list of participating interstate and intrastate carriers of this Classification, or as an		
300100	APF	PLICATION	
	Rule	e Rules are published in compliance with the report and order of the Interstate Commerce Commission in Ex Parte No. 263, s, Regulations, and Practices of Regulated Carriers with Respect to the Processing of Loss and Damage Claims, served February 972. The purposes of these Principles and Practices are:	
	(a)	To obtain uniformity on the part of all carriers and uniform treatment of all claimants in the disposition of claims of like nature.	
	(b)	To secure and preserve harmonious relationships in claim matters between carriers and their patrons.	
	(c)	To effect and maintain a prompt and efficient service to the public in connection with the investigation and disposition of freight claims.	
300105	FILI	NG OF CLAIMS	
	(a)	Compliance with regulations. A claim for loss or loss or damage to baggage or for loss, damage, injury, or delay to cargo will not be voluntarily paid by a carrier unless filed in writing, as provided in subparagraph (b) below, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits applicable thereto and as otherwise may be required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto.	
(b)		(b) Minimum filing requirements. A communication in writing from a claimant, filed with a proper carrier within the time specified in the bill of lading or contract of carriage or transportation, and (1) containing facts sufficient to identify the baggage or shipment (or shipments) of property involved, (2) asserting liability to alleged loss, damage, injury, or dela (3) making claim for the payment of a specified or determinable amount of money, will be considered as sufficient cor with the provisions for filing claims embraced in the bill of lading or other contract of carriage.	
(c)		Bad order reports, appraisal report of damage, notations of exceptions on freight bills or other documents, inspection reports issued by carrier inspectors or inspection agencies, tracers or inspection requests do not comply with claim filing requirements.	

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300110	DOC	CUM	ENTS REQUIRED IN SUPPORT OF CLAIMS			
	(a)		itten demand for payment, asserting carrier liability for alleged loss, damage, injury or delay, and containing facts cient to identify the shipment or shipments involved will constitute a claim, regardless of form, and will be required.			
	(b) When claimant does not		n claimant does not appear from the supporting documents to be an interested party, carrier will require any necessary			
			en assignment or other proof to determine the claimant is the proper party to receive any claim payment.			
or an prope		or an	n must be supported by either the original invoice; a photographic copy of the original invoice; an exact copy thereof, extract therefrom, certified by the claimant or his authorized representative to be true and correct with respect to the erty involved in the claim and reflecting all trade or other discounts, allowances, or deductions of any nature. When the nal invoice is not submitted, such document must be made available for inspection by carrier representative upon request.			
	(d)	Whe	n determined by the carrier to be a necessary part of the investigation, the following will be required:			
		1.	The original freight bill and Bill of Lading or other contract of carriage. When claimant cannot furnish these documents, carrier may require suitable indemnity from the claimant.			
		2.	When the property involved in the claim has not been invoiced to the recipient or where invoice does not show price or value, or where the property has not been sold but transferred at bookkeeping values only, or where property as been shipped on consignment or approval, documentation to establish destination value in the quantity shipped and certification of the correctness thereof.			
		3.	In order to establish the full recoverable loss caused by the carriers, the original account of sale, showing the date of sale and the amounts realized on the damaged and undamaged portions, respectively, showing grade, brands, quality, variety, size and condition, together with any deductions, allowances, and commissions, or a copy thereof certified correct over the signature of the claimant or an authorized representative thereof.			
		4.	When shipment has received prior transportation and is reshipped from a distribution or warehousing point but has been opened and examined and contents verified as being in undamaged condition, certification thereof must be made by a person having actual knowledge of such inspection and a statement to that effect incorporated in such certification.			
	5.		When an asserted claim for loss of an entire package or on an entire shipment cannot be otherwise authenticated upon investigation, the carrier will obtain from the recipient of the shipment involved, a certified statement in writing that the property for which the claim is filed has not been received from any source.			
300115	CLA	IMS	FILED FOR UNCERTAIN AMOUNTS			
	whor will a volur	n such ascerta atarily	a claim is presented against a proper carrier for an uncertain amount, such as "\$100 more or less," the carrier against a claims filed will determine the condition of the shipment involved at the time of delivery by it, if it was delivered, and ain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It will not however, pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of been filed in accordance with the provisions of item 300105.			
300120	ACK	(NO\	WLEDGMENT AND DISPOSITION OF CLAIMS			
thereto, and will pay, refuse payment, or make a firm compromise offer within 120 days after receipt of claim, except, that cannot be disposed of within this period, carrier will at that time and at the end of each succeeding 60-day period therear claim remains pending, inform the claimant in writing of the reason for failure to conclude claim. The carrier shall indicate acknowledgement to the claimant what, if any, additional documentary evidence or other pertinent information may be refurther to process the claim as its preliminary examination of the claim, as filed, may have revealed. A separately number		disposed of within this period, carrier will at that time and at the end of each succeeding 60-day period thereafter while ins pending, inform the claimant in writing of the reason for failure to conclude claim. The carrier shall indicate in its gement to the claimant what, if any, additional documentary evidence or other pertinent information may be required by process the claim as its preliminary examination of the claim, as filed, may have revealed. A separately numbered file will hed for each claim filed in accord with the provisions of this tariff. All documents, records and correspondence pertaining				
300122	<del> </del>		MORE CLAIMS PRESENTED ON SAME SHIPMENT			
	Whe shipr betw or ov	n inve nent, t een o erlapp	stigation of a claim develops that one or more other carriers has been presented with a similar claim on the same the carrier investigating such claim will communicate with each other carrier and, prior to any agreement entered into r among them as to the proper disposition of such claim or claims, will notify all claimants of the receipt of conflicting ping claims and will require further substantiation, on the part of each claimant of his title to the property involved or his respect to such claim.			
ITEM	1		TIONS GOVERNING THE INSPECTION OF FREIGHT BEFORE OR AFTER DELIVERY TO NT AND ADJUSTMENT OF CLAIMS FOR LOSS OR DAMAGE			

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300125	APPLICATION
	Loss of or damage to contents of package, not definitely known to exist at time of delivery by carrier to recipient may be due to negligence in packing, handling or unpacking, or abstraction from containers, and is the subject of frequent claims and contravenes. In order to avoid any discrimination, and so that practices will be certain and uniform in the treatment of claims of this character, the following rules apply.
300130	PILFERAGE
	When offering a shipment for delivery, if any portion of shipment bears any indication of having been pilfered, a joint inventory of contents must be made by carrier and recipient and the results of inventory so noted on carrier's delivery receipt.
300135	REPORTING CONCEALED DAMAGE
	When damage to contents of a shipping container is discovered by the recipient which could not have been determined at time of delivery, it must be reported by the recipient to the delivering carrier upon discovery and a request for inspection by the carrier's representative made. Notice of loss or damage and request for inspection may be given by telephone or in person, but in either event must be confirmed in writing by mail. If more than fifteen days pass between date of delivery of shipment by carrier and date of report of loss or damage, and request for inspection by recipient, it is incumbent upon the recipient to offer reasonable evidence to the carrier's representative when inspection is made that loss or damage was not incurred by the recipient after delivery of shipment by carrier. While awaiting inspection by carrier, the recipient must hold the shipping container and its contents in the same condition they were in when damage was discovered insofar as it is possible to do so.
300140	INSPECTION BY CARRIER
	Inspection by carrier will be made as promptly as possible and practicable after receipt of request by recipient. Inspection will be made within five normal work days after receipt of request from recipient, excluding Saturdays, Sundays and holidays. A day will be considered as the passing of twenty-four (24) hours from 9 a.m., local time from the date of receipt of request for inspection. Inspection of carrier will include examination of the damaged merchandise, the shipping container, and any other action necessary to establish all facts. If a shortage is involved, inspector will check contents of package with invoice, weigh the shipping container and contents, or conduct any other type of investigation necessary to establish that a loss has occurred. In either case inspection will be limited to factual report. Recipient must cooperate with carrier in every way possible to assist in the inspection. A written record of carrier's findings will be made at least in duplicate. The original of the report will be given to the recipient for claim support. Any inspection report issued must be incorporated in claim file.
300145	FAILURE TO INSPECT
	In the event carrier does not make an inspection, the recipient must make the inspection and record all information to the best of his ability pertinent to the cause. Recipient's inspection, in such case, will be considered as the carrier's inspection and will not jeopardize any recovery the recipient is due based on the facts contained in the report.
300150	SALVAGE RETENTION
	When visible or open damage to a shipment has been established by notation having been given at time of delivery or concealed damage established by inspection report, it is the duty of the recipient to retain damaged merchandise and shipping container until carrier desires to take possession of merchandise as salvage. If record conclusively reflects carrier liability, carrier will take possession of the damaged merchandise as soon as possible and in any event, within thirty (30) days from date shipment was noted damaged on carrier delivery receipt or from date of inspection report, if damage was concealed. If carrier does not take possession of the damaged merchandise within the time prescribed above, recipient must contact delivering carrier and request removal of goods from his premises within fifteen (15) days from the date of such communication. The above applies only when the carrier and recipient agree that the carrier will handle disposition of the salvage, and does not in any manner affect the legal duty that the recipient, when there is substantial value in the salvage, must accept and handle it in such a manner as to mitigate the carrier's loss as much as possible. If there is doubt of carrier liability, the carrier will so advise recipient; in which event the recipient may hold the merchandise until liability of carrier is determined, or may dispose of it so as to mitigate the damage, and may file claim for such damage. Carrier will remove the damaged goods within the fifteen (15) day period or advise recipient that carrier liability is in doubt and that damaged merchandise is to be retained by the recipient until carrier has completed investigation of claim.
300155	PRIOR TRANSPORTATION
	If a concealed damage inspection report covers merchandise which has had prior shipping movement, recipient is required to assist carrier in determining if shipment was opened and inspected by shipper prior to reshipment, and if not, shall then assist carrier in every way possible to establish record of prior shipping.

8

# **Principles and Practices for the Investigation and Disposition of Freight Claims** Copied from the National Motor Freight Classification 100-Series

### **Cargo Claims Contact Information**

Mailing Address

FedEx Cargo Claims Dept. P.O. Box 256 Pittsburgh, PA 15230

Phone

1.800.308.3963

Fax

1.877.229.4766

Email

file.claim@fedex.com



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David Jacoby

Exhibit 20

# The 4 Most Common Freight Claims Submitted by Shippers

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<u>by-</u> shippers/)



that a <u>freight claim (https://www.redwoodlogistics.com/basics-carriers-freight-claims/)</u> is intended to solely recover losses from the damage – but does not always cover additional lost revenue. However, there are times and specific types of freight claims that can cover these ancillary expenses.

In this blog post, we'll outline some of the facts about freight claims. We also introduce 4 of the most common freight claims submitted by shippers.

## What is a Freight Claim?

Officially, a <u>freight claim (https://www.redwoodlogistics.com/filing-file-freight-claim-get-full-amount/)</u> is defined as a legal demand submitted by a shipper or a 3PL on their behalf to a carrier for financial reimbursement on the loss or damage of a shipment. And there are a variety of freight claim types. More specifically, four of them. These names simply indicate the type of claim. They include titles such as shipping claims, cargo claims, transportation claims, or loss and damage claims. The intent of a freight claim is to have the carrier resolve the matter to the point that the initial terms noted on the <u>Bill of Lading (https://www.redwoodlogistics.com/bill-of-lading-comprehensive-overview/)</u> has been fulfilled. A freight claim recovers loss. However, it is not to reimburse lost profits.

However, there are some exceptions to this general rule.

While the freight claim is intended to recover damages, some shippers go the extra effort by protecting their products with <u>freight insurance (https://www.redwoodlogistics.com/basics-carriers-freight-claims/)</u>. The problem is that there are no policies or standard policies that a carrier can secure due to the Carmack Amendment or common law. In fact, shippers clarifying their level of insurance protection with their carriers is vital.

# What are the Most Common Freight Claims Shippers File?

Aside from common freight claims, shippers also file for four specific types of freight claims more frequently than others. Those four freight claims include the following:

- **Damage Freight Claims**: The most popular type of freight claim is the "damage" claim. Under this filing, the freight arrives at its destination damaged. The damage must be visible and noted on the bill of lading or proof of delivery paperwork.
- Loss Freight Claims: The second most popular freight claim is one that attempts to recover "loss". This happens when freight is picked up from a shipper but never delivered. To prove this type of claim, the original bill of lading needs to verify a pick-up by the carrier.
- Shortage Freight Claim: The shortage claim is similar to the loss freight claim, but in this instance, it refers to the recipient receiving partial loads. An example of this is if two pallets with 50 boxes total were shipped, but only 25 were received by the recipient. This is why it's critical for shippers and recipients to verify the count of items listed on the BOL.
- Concealed Damage (https://www.redwoodlogistics.com/concealed-damage-in-freight-what-you-need-to-know/) or
  Shortage Freight Claim: Of the top 4 freight claims, this is the one that is the most difficult to obtain from a carrier simply
  due to the fact that it's hard to notate on a bill of lading upon receiving of the freight. A concealed or shortage claim
  (https://www.redwoodlogistics.com/reducing-the-potential-of-concealed-damage-of-freight-for-the-new-year/) occurs
  when the receiver is opening a box or container and discovers damage inside or missing components.

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movement and receiving of products. It's also important for receivers to take the time to open and inspect the freight. By doing such, they can discover hidden damage, and have the driver notate this on the Bill of Lading (BOL).

## Final Thoughts

One way that a shipper can reduce the headaches of freight claims is by partnering with an experienced 3PL.

Professional 3PL companies should understand the complexity of filing freight claims. Furthermore, they should know how to minimize damage by proper packing, loading, and working with experienced and dependable carriers.

Still need a little help reducing or filing freight claims? Reach out to the team here (https://www.redwoodlogistics.com/contact/) at Redwood Logistics and let us help you get back on the right track!

\_(http://pi.ltxsolutions.com/complete-guide-LTL)

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David Jacoby

Gerald Sabino 30831 Casilina Rancho Palos Verdes, CA 90275

#### EXPERT REPORT OF GERALD SABINO

Great Southland Limited v. Landash Corp. et al.

June 14, 2021

#### QUALIFICATIONS

I graduated from Northern Illinois University in 1969 with a Bachclor's degree in management. After graduation, I was drafted into the Army and served during the Vietnam War. After my military service, I joined a company named Chicago Specialty. I was a plant manager and responsible for their warehousing and manufacturing. In 1977 I joined Pioneer Electronics, a manufacturer and global distributor of consumer electronics, as the Chicago branch manager. I served in this role for 4 years during which time I oversaw warehousing and shipping of all of Pioneer Electronics products across the entire Midwest Region, which required me to be familiar with the entire logistics channel and process for the company. In 1981, I was promoted to Vice President of Operations of Pioneer Electronics and relocated to California. In this role, I oversaw four warehouses and distribution centers for the entire United States, as well as some international distribution. In this role, I regularly worked with logistics companies and freight forwarders including negotiating Pioneer's agreements with them, monitoring day-to-day operations, and handling loss claims. I was with Pioneer until 1987.

In 1988, I joined NEC America, Inc. ("NEC") where I first came on as Director of Operations of the Chicago branch. In this role, I ran the Chicago branch and oversaw all warehousing for the Midwest Region. This role required me to have frequent, at least weekly, and ongoing dealings with freight forwarders, including negotiating pricing agreements, service level agreements, and handling day-to-day affairs.

In 1997, I was promoted to General Manager of NEC and relocated to California. In this role, I was in charge of all of warehousing for NEC and regularly negotiated corporate pricing agreements with freight forwarders and logistics companies. At least quarterly I met with approximately ten freight forwarders individually to discuss their services, negotiate service agreements, and manage NEC's relationship with those freight forwarders. In 1998, NEC's operations expanded to include public warehousing. With this change I became responsible for all contract negotiations for approximately 70 to 100 customers. In 2015, I also assumed management responsibility for brokerage and international air and ocean forwarding activities.

From roughly 1989, when I began my warehousing career, until my retirement in 2018, I was a member of two warehousing and transportation associations—International Warehouse Logistics Association and the National Industrial Transportation League. In 2015, I presented regarding the Infor warehouse management system to an audience of approximately 100 warehousing professionals.

Outside of my time with the Army, I spent my entire career in Supply Chain management including warehousing, distribution, domestic and international transportation.

#### **FACTS AND DATA CONSIDERED**

I have considered the following facts and data to form the opinions expressed herein:

- 1. Depositions and exhibits of Dominic Muzi, Max Shook, Henrik Jorgensen, and RoadMaster Trucking, Inc. representatives Carlos Musetti and Cesar Bernal.
- 2. Warehouse Receipt No. 310056. (Complaint Exhibit 12)
- 3. March 7, 2016 "Inspection" documents. (Complaint Exhibit 14)
- 4. An April 8, 2016 email from Adkins to Hodgson regarding billing. (Hodgson Deposition Exhibit 33)
- 5. An April 11, 2016 email from Baltagi to Hodgson regarding billing. (Complaint Exhibit 13)
  - An April 26, 2016 email from Thomson to Baltagi regarding serial numbers. (XPOAB00015230)
- 6. The First Amended Complaint and the attached exhibits.

I have also considered the business model and operations of XPO Logistics, Inc. ("XPO Logistics") and XPO Global Forwarding, Inc. ("XPO Global Forwarding;" both together, "XPO") and their size, number of employees, number of locations, and related characteristics in forming these opinions. As part of that consideration, I have reviewed the following documents:

- 7. Concert Group Logistics Operations Training Manual. (XPOAB00062690-XPOAB00063153)
- 8. Supervisor/Manager Training 2015 Manual. (XPOAB00063154-XPOAB00063366)
- 9. Policy on Commercial Contracts. (XPOAB00063539-XPOAB0063540)
- 10. Code of Business Ethics. (XPOAB00063550-XPOAB63562)
- 11. Baltagi Candidate Profile Presented to XPO Logistics, August 29, 2012. (XPOAB00013615-XPOAB00013621)
- 12. Photographs of the RoadMaster Trucking, Inc. building where the Houston branch of XPO Global Forwarding was located from the time period surrounding the subject transaction. (Hodgson Deposition Exhibit 16)

#### STATEMENT AND BASIS OF OPINIONS

I hold the following opinions based on my experience, training, skill, and qualifications in the warehouse and freight forwarding industries, as well as my review of the information described above.

#### **OPINIONS**

#### 1 Warehouse Receipt No. 310056.

- This document is not on XPO's letterhead which immediately calls into question its authenticity.
- In my experience, warehouse receipts are automatically generated by a software program or are form documents maintained by the warehouse. It is unclear who drafted this document, however, it does not appear to be an XPO document. It is contrary to custom and practice in the industry to expect XPO to authorize its employee or branch manager to sign a document drafted by the customer or a third party without it first being approved by the appropriate department, and this document contains no indication that this was so approved. This is consistent with XPO's policies in place at the time.
- It would be outside of industry custom and practice for a warehouse or freight forwarder to authorize its employee or branch manager to sign this Warehouse Receipt. It would be obvious to anyone looking at this document that no such company would authorize signature of these documents.
- It is also contrary to industry custom and practice for a Warehouse Receipt to be directed to and signed by XPO, which was serving as the freight forwarder. Rather, this document should have been directed to RoadMaster, the warehouse. In fact, it is common in the industry for a freight forwarder to subcontract with a company like RoadMaster Trucking, Inc. ("RoadMaster").
- Although a warehouse branch manager might have authority to sign a warehouse receipt, the documents titled Warehouse Receipt No. 310056 is not a typical warehouse receipt that any warehouse branch manager would be authorized to sign. A freight forwarder like XPO Global Forwarding would not be expected to sign a warehouse receipt at all because it is not a warehouse and tracks the movement of goods on bills of lading or airway bills.
- Authority aside, in my experience the warehouse branch manager is not the person on the dock confirming inventory arrived. That is not an

- efficient use of a \$100,000+ per year employee's time. Inventory documentation is typically delegated to lower-level employees.
- This document also says that it was issued "for the account of Great Southland Limited[.]" However, in the April 11, 2016 email from Baltagi to Hodgson (Complaint Exhibit 13), Baltagi told Hodgson that he was billing Adkins, not GSL. Custom and practice in the industry dictates that no warehouse or freight forwarder would allow its employee or branch manager to sign this document putting the company in the middle of a financial transaction it has nothing to do with.

#### 2. March 7, 2016 "Inspection" documents.

- XPO Global Forwarding is not an inspection company. Although it might confirm receipt of inventory through a bill of lading, perform an item count, or make sure the inventory is not obviously damaged in transport, in my experience, a freight forwarding company would not authorize its employees or branch managers to issue an inspection report like this.
- This document is highly unusual because it says that XPO inspected the tires and confirmed they are new in condition. Typically, an inspection would only relate that the inventory does not appear to have any obvious damage from transit. In my experience, a warehouse or freight forwarder of the size and sophistication of XPO Global Forwarding would not sign off on goods as being in "new" condition.
- It is not standard industry practice for a warehouse branch manager to issue "inspection reports." A warehouse is not an inspection company. For a warehouse branch manager to issue an inspection report, I would expect there to be a detailed scope of work detailing the parameters of the inspection and the areas to be noted in the report.
- 3. A warehouse is a large building or outside storage area where inventory is stored on a short-term to long-term basis before its export or sale. An international freight forwarder arranges for the shipment of inventory internationally by utilizing its relationships with carriers to negotiate the best price to move goods along the most cost-efficient, quickest, or most direct route internationally, depending on the circumstances of the shipment. A freight forwarder typically never takes possession of the inventory, whereas a warehouse, by definition, takes possession of the inventory and stores it until it is ready to be moved. In my experience, it is not uncommon for a freight forwarder to rely on the services of a warehouse as goods are being readied for shipment, but in that case, the warehouse, not the freight forwarder, has possession of the goods.
- 4. XPO Logistics is a corporate "parent" company and functions as a holding company for its subsidiary companies. It has no operations itself. XPO Logistics' subsidiaries engage in providing logistics and transportation

services. XPO Global Forwarding is engaged in freight forwarding. It is my understanding from reviewing the documents and considering the materials above, that neither XPO Logistics nor XPO Global Forwarding holds itself out to be a warehousing company. It is my understanding that the warehouse where the OTR tires, subject to this case, were stored in the relevant time period was owned by RoadMaster.

- 5. An international freight forwarding company like XPO Global Forwarding would be subject to written policies governing the authority of employees to sign documents to bind the company. XPO Global Forwarding is subject to such policies which I have reviewed. Those written policies indicate that the branch manager of the Houston branch of XPO Global Forwarding would not have had the authority to sign Documents discussed in 1 and 2 above, which is consistent with my understanding of how freight forwarders generally function.
- 6. XPO did not fail to adhere to industry custom and practice by failing to implement a warehouse management system ("WMS") at the Houston location. XPO did not operate a warehouse out of Houston, the warehouse was operated by RoadMaster. XPO offered freight forwarding services and operated a small office location that happened to be adjacent to the warehouse. It is not uncommon for freight forwarders to refrain from use of a WMS, even where they utilize Cargowise and have the option to activate the WMS function of that program.
- 7. A WMS would not necessarily catch multiple entries of the same inventory into the system. For example, some WMS only validate inventory against the same storer. Inventory that overlapped with that of another storer would not be caught under those circumstances. In addition, where a branch manager is intent on committing a fraud, I would expect him or her to be able to bypass any duplicate entry alerts of a WMS system in any event.
- 8. The XPO Houston facility was not a CFS. It is my understanding that cargo was not being broken down at that location to be consolidated/deconsolidated.
- 9. XPO's inventory management practices adhered to industry norms and custom. A warehouse (which XPO was not in this instance) mostly follows the inventory requirements imposed by its customer. There is no industry requirement for a warehouse to engage in any standardized inventory counts. Typically a warehouse does perform cycle counts to protect against internal inventory shrink, but this is not a uniform practice, particularly where the inventory in question (such as large OTR tires) is not readily susceptible to internal inventory shrink. A freight forwarder would not be expected to perform inventory counts because it does not provide long-term storage or possess the goods.
- 10. Cycle counting would not have uncovered the fraud here. First, where the branch manager is intent on committing fraud, I would expect him or her to use fraud in the cycle count as well, preventing discovery of the fraud.

- 11. Physical annual inventory counts like stock counts would not have uncovered the fraud either for the same reasons. There is no external requirement to do physical annual inventory counts unless the customer requests counts and builds that into the agreement for services. Inventory counts have a cost and if they are required it is because the customer asks for it and the warehouse builds it into the cost of services. A freight forwarder wouldn't do stock counts or annual inventory counts because they do not provide long-term storage or possess the goods.
- 12. XPO's reliance on RoadMaster to keep inventory was consistent with industry custom and practice. In fact, that was the responsible thing for XPO to do under the circumstances because the Houston location was not a warehouse and was not accustomed to warehouse inventory management practices. It was completely in line with industry norms and best practices for XPO to outsource this responsibility to a warehouse.
- 13. Further, XPO's reliance on RoadMaster to perform third-party warehouse services in no way contributed to Afif Baltagi's fraudulent conduct that I have seen. I have seen no indication that RoadMaster failed to appropriately maintain inventory or that XPO had reason to believe that was the case, or that RoadMaster's handling of inventory contributed to the fraud.
- 14. Audits would not have uncovered the fraud here. Audits don't include the review of employee emails. It is my understanding that the only place the unauthorized documents were kept is in Afif Baltagi's emails. Without those documents, there would be no way for an audit team to uncover the fraud since a comparison of the inventory in the yard with the inventory logs maintained by RoadMaster were consistent.
- 15. The Star Funding issue and Afif Baltagi's outstanding AR would not lead to a suspicion of widespread fraud like the fraud here. It is not uncommon nor unexpected for a freight forwarder to have competing ownership claims on goods. AR is something that many competent branch managers struggle with and is not unusual or suggesting of fraud.
- 16. Based on my experience, the documents referenced above, individually and especially considered together as a whole, are outside the custom and practice in the industry and contain significant red flags and are full of red flags suggesting something improper is going on, such as potentially fraud. Relying on these documents for a significant transaction would not be consistent with industry custom and practice.
- 17. It is my understanding that the warehouse where the tires were kept was owned and operated by RoadMaster, not XPO. The documents show that it would have been apparent from a simple visual inspection to the location in 2015 or 2016 that RoadMaster was the operator of the warehouse, not XPO. RoadMaster also kept

the inventory of the tires. RoadMaster maintained the equipment capable of loading in and loading out the tires, and of manipulating the tires to permit an inspection. RoadMaster, not XPO, would be expected to sign documents related to inventory, given the red flags mentioned above, however, it would even be outside custom and practice in the industry for RoadMaster to sign these documents.

I have reviewed the depositions identified above. It is my opinion, based on my experience and skill in the industry, that it was reasonable and consistent with industry standard, custom, and practice for XPO Global Forwarding to delegate warehousing duties to RoadMaster. RoadMaster's inventory processes described in the depositions meet industry standards as well.

- 18. RoadMaster is not a bonded warehouse. In fact, there are specific criteria that a warehouse must meet to be a bonded warehouse. Being "bonded" means that goods can be stored without paying customs duties until the goods are released from the warehouse, pursuant to federal law. See 19 CFR Part 19 and subchapters. For example, to be bonded, a warehouse must meet certain security requirements. No person is authorized to access inventory without certain credentials and without signing in. Based on my review of documents and testimony, the RoadMaster warehouse in Houston, Texas was not a "bonded" warehouse. A person with knowledge in the industry would know from a visual inspection that the RoadMaster facility was not a "bonded" warehouse.
- 19. The warehouse was a RoadMaster warehouse and not XPO's. I've also viewed photos of the RoadMaster warehouse. There is no XPO signage on the warehouse. Rather, it was obviously marked as a RoadMaster Trucking warehouse. This should have raised red flags to anyone who viewed the warehouse and believed that was an XPO facility.

#### LIST OF PUBLICATIONS AND CASE TESTIMONY IN LAST TEN YEARS

I have offered testimony in Abington Emerson Capital, v. Jason Adkins, et al., S.D. Ohio No. 2:17-cv-00143; Vecron Exim Ltd. v. XPO Logistics Inc., et al., S.D. Texas No. 4:18-cv-02394; Kirby Developments, LLC v. XPO Logistics, Inc., et al., 2:18-cv-00500 S.D. Ohio.

I do not have any publications in the past four years.

#### **COMPENSATION PAID**

\$200 per hour.

I swear under penalty of perjury that the foregoing is correct to the best of my knowledge and understanding.

Ву:

Gerald Sahino